



Snohomish County

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DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

I. SUMMARY

DATE OF DECISION:	May 25, 2016
PROJECT:	Frognal Estates (formerly Horseman's Trail) Both sides of 60th Avenue West, north of 136th Place West, off Picnic Point Road, approximately ½ mile south of the city of Mukilteo
OWNER AND APPLICANT:	Frognal Holdings LLC 8115 Broadway Ave., Ste. 204 Everett, WA 98203
FILE NO.:	05-123050 SD
TYPE OF REQUEST:	<ol style="list-style-type: none">1. Appeal of SEPA environmental impact statement2. Request to alter final plat of Regatta Estates with respect to Lot 13. Request for approval of preliminary subdivision and Planned Residential Development official site plan for 112 lots
DECISION SUMMARY:	<ol style="list-style-type: none">1. Adequacy of SEPA environmental impact statement is AFFIRMED2. Request to alter final plat of Regatta Estates with respect to Lot 1 is APPROVED3. Upon fulfillment of pre-conditions, preliminary subdivision and Planned Residential Development site plan of 112 lots are APPROVED subject to conditions

Frognal Estates

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Subdivision with Pre-Conditions and Conditions

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II. BASIC INFORMATION

TAX PARCEL NUMBERS:	00473300002701, 00473300002800, 00853500000100
LOCATION:	Both sides of 60th Ave W, 200 feet north of 136th Place W., off Picnic Point Road, approximately ½ mile south of the city limits of Mukilteo, WA
ACREAGE:	22.34 acres
PLAN DESIGNATIONS:	<ol style="list-style-type: none"> General Policy Plan: Urban Low Density Residential & Medium Density Residential Paine Field Area Plan: Suburban with Environmentally Sensitive Overlay (2-4 du/ac) Possession Shores Master Plan (Harbour Pointe Master Plan): Single Family High (4.5 du/ac)
ZONING:	R-8,400 and R-9,600

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UTILITIES:

Water: Alderwood Water and Wastewater District

Sewer: Alderwood Water and Wastewater District

Electricity: Snohomish County Public Utility Dist. No. 1

SCHOOL DISTRICT: Mukilteo School District No. 6

FIRE DISTRICT: Snohomish County Fire District No. 1

PDS STAFF 1. Deny SEPA appeal

RECOMMENDATION: 2. Approve alteration of Regatta Estates final plat
3. Upon fulfillment of pre-conditions, approve preliminary subdivision and Planned Residential Development official site plan, subject to conditions.

1 **NOTE:** For a complete record, an electronic recording of the hearing in this case and the hearing log is
2 available in the Office of Hearings Administration.

3 Based on a preponderance of the evidence of record, the following findings of fact, conclusions of law, and
4 decision are entered.

5 **III. SEPA**

6 **A. Findings of Fact**

7 **1. General**¹

8 F.1 On August 4, 2005, Horseman's Trail LLC filed an application to develop a 116 lot Planned
9 Residential Development (PRD) and alteration of Regatta Estates plat.² PDS deemed the application
10 complete as of that date.

11 F.2 Frogmal Holdings LLC is the successor in interest to Horseman's Trail LLC. Frogmal proposes 112 lots
12 instead of the initial 116.

¹ Headings for convenience only and should not be interpreted to limit the content.

² Ex. A.1. Annotations to exhibits and testimony are for the reader's convenience only. Annotations are not intended to comprehend all evidence supporting the finding, nor should the lack of annotation suggest a lack of evidence. The lack of an annotation means only that a citation was not immediately at hand when the decision was written.

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- 1 F.3 The project site consists of three vacant parcels. Lot 1 of Regatta Estates is 7.51 acres³ and lies
2 within sectors 22 and 23 of the Harbour Pointe⁴ Master Plan area. Lot 1 is zoned R-8,400. The other
3 two parcels, Lots 27 and 28 of Hillman's Meadow Addition, lie outside the Harbour Pointe Master
4 Plan area and are zoned R-9,600. Frogna! does not seek to change the zoning.
- 5 F.4 As required by the Harbour Pointe Master Plan, PDS issued a Division of Development on
6 September 10, 2015,⁵ and a corrected Division of Development on September 23, 2015.⁶
- 7 F.5 The GMA comprehensive plan in effect at the time of initial application⁷ designated the majority of
8 the site as Urban Low Density Residential and two small pieces as Urban Medium Density
9 Residential.
- 10 F.6 The Paine Field Area Plan designated the site as Suburban (2-4 dwelling units per acre) with an
11 Environmentally Sensitive Overlay for slopes.
- 12 F.7 PDS provided adequate notice of the open record hearing, concurrency determination, and
13 mitigation impact fees.⁸
- 14 F.8 An open record hearing was held on the dates described in Appendix A. Witnesses who testified
15 and documents admitted into evidence are identified in Appendix A. The witnesses and admitted
16 documents listed in Appendix A were considered by the Examiner in reaching this decision.
- 17 F.9 The Examiner made four visits to the project site and neighborhood over three days, observing
18 traffic at the start and end of the school day at Picnic Point Elementary School.

19 2. EIS

- 20 F.10 PDS reviewed Frogna!'s land use application and State Environmental Policy Act ("SEPA")
21 environmental checklist.⁹
- 22 F.11 PDS issued a limited determination of significance on April 27, 2007.¹⁰ PDS proposed to require
23 environmental analysis of the Earth element.
- 24 F.12 PDS accepted public comments on the potential scope of the EIS through May 30, 2007.
- 25 F.13 As a result of comments received during the scoping period, PDS expanded the scope of the EIS to
26 include analysis of the Water element.¹¹

³ Including 0.36 acres of unopened right-of-way through the middle of Lot 1.

⁴ The original name of the Harbour Pointe Master Plan was Possession Shores Master Plan. Ex. K.6.

⁵ Ex. K.3.

⁶ Ex. K.4.

⁷ Adopted by Resolution 05-001.

⁸ Ex. F.20 to F.24.

⁹ Ex. E.1.

¹⁰ Ex. E.2.

¹¹ Testimony of Ryan Countryman. Hereafter testimony will be identified by the name of the witness.

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- 1 F.14 PDS issued a draft EIS on July 23, 2014.¹²
- 2 F.15 PDS required peer review. Dr. Anthony Burgess was engaged to provide the review. Dr. Burgess
3 conducted studies, including the placement and drilling of three monitoring wells. Although his fee
4 was paid by Frogal, he was independent. Frogal did not direct Dr. Burgess' work.¹³
- 5 F.16 The environmental impact statement reviewed a no action alternative, the proposed 112 detached
6 single family residences alternative, and 112 unit multi-family residence alternative.
- 7 F.17 After receiving comments, PDS issued the final EIS on September 13, 2015.¹⁴
- 8 F.18 The EIS analyzed surface and sub-surface drainage, stormwater generally, temporary erosion and
9 sediment control during construction, stormwater after the project is built, surface water (quantity
10 and quality), and stormwater mitigation.
- 11 F.19 The final and complete EIS consists of the draft EIS,¹⁵ technical appendices,¹⁶ technical reports,¹⁷ and
12 final EIS.¹⁸ The final EIS does not reproduce some material from the Draft EIS, but incorporates it by
13 reference, such as descriptions of the proposal and alternatives.
- 14 F.20 Appellant Picnic Point Preservation Committee (Preservation Committee) appealed the adequacy of
15 the EIS on October 2, 2015.¹⁹ The notice of appeal challenged the adequacy of the EIS regarding:
16 drainage (subsurface and surface), slope and soil conditions, slope stability, landslide potential,
17 wildlife habitat, water quality and fish habitat in Picnic Point Creek, transportation (vehicle and
18 pedestrian safety), elementary schools, and fire safety;²⁰ the range of alternatives discussed;
19 impacts on the road system, vehicle and pedestrian safety, elementary schools, and fire emergency
20 services; cumulative impacts in conjunction with other development in the Picnic Point Creek
21 Drainage Basin; and disclosure of unmitigated significant adverse impacts resulting from the
22 proposal.²¹
- 23 3. Geologic Conditions
- 24 F.21 The Frogal site is not an active landslide area.²² The only potential indication of slope movement is
25 a single linear depression on the surface, which could be a tension crack.²³ The linear depression in
26 the slope was caused by mountain beavers, which are native to the area, and is not a tension

¹² Ex. E.3.

¹³ Mr. Countryman.

¹⁴ Ex. E.5.

¹⁵ Ex. E.3.

¹⁶ Exhibits E.4, E.4A-4E.

¹⁷ Ex. C.6.

¹⁸ Ex. E.5.

¹⁹ Ex. E.5.

²⁰ Ex. E.5; L.1 (Notice of Appeal, 10/1/2015 pp. 2-3, sec. 2.1, and 2.4.

²¹ Ex. L.1, §§ 2.1-2.6.

²² Dr. Miller and Dr. Burgess.

²³ Dr. Miller.

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crack.²⁴ Current conditions of the site do not present a landslide hazard. There is no evidence of landslide activity on the site in the past several hundred years.²⁵

F.22 There is no evidence of seeps on the slopes at FrognaI.²⁶

F.23 The geology of the FrognaI site is different from the geology closer to Puget Sound. The FrognaI site has a thick package of Vashon advance outwash all the way to the bottom of the slope. Farther down the Picnic Point Creek valley, groundwater discharges in the Whidbey formation and is classically where landslides occur. Some are visible down valley in LIDAR imaging.²⁷ FrognaI has incised drainage ravines and no evidence of landslides.²⁸

F.24 There are substantial differences between the geologic conditions of the site and the area of the Oso slide.²⁹

F.25 Much of the site consists of low permeability glacial till atop permeable Vashon advance outwash. The infiltration rate of Vashon advance outwash is approximately six inches per hour.³⁰

F.26 The unsaturated zone of Vashon advance outwash dampens the response of the groundwater level by slowing transit time and by providing storage capacity.³¹

4. FrognaI's Proposal

F.27 FrognaI proposes to change the topographic contours of the site by moving low permeable glacial till into depressions or ravines, exposing the underlying permeable advance outwash. FrognaI estimates it will move approximately 285,000 cubic yards of material.³²

F.28 Low permeability glacial till will be graded off of higher elevations, exposing permeable Vashon advance outwash, and used to fill lower elevations. The final surface of areas filled with glacial till will therefore have relatively low permeability. Areas of higher elevations that had glacial till removed to expose Vashon advance outwash will be much more permeable. Glacial till will not be stockpiled, but will be used as fill when cut.³³

F.29 Regrading will not increase the risk of landslides on the site;³⁴ it may increase slope stability.³⁵

²⁴ Dr. Burgess and Mr. Koger.

²⁵ Dr. Miller and Dr. Burgess.

²⁶ Dr. Burgess.

²⁷ Ex. N.20.

²⁸ Mr. Koger.

²⁹ Dr. Miller.

³⁰ Dr. Bandaragoda.

³¹ Mr. Koger.

³² Mr. Countryman.

³³ Dr. Burgess.

³⁴ Dr. Miller.

³⁵ Dr. Miller.

FrognaI Estates

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- 1 F.30 Frognal does not plan to export significant quantities of material from the site.
- 2 F.31 The greatest risk of sediment transport will occur during the clearing and grading of the site.
- 3 Sediment transport is only a concern during construction. After the project is constructed, sediment
- 4 transport is no longer a concern.³⁶
- 5 F.32 In addition to plat alteration and preliminary plat approval, Frognal will need to obtain more
- 6 permits to build the project. For example, Frognal will need to obtain a land disturbing activity
- 7 permit, building permits, and final plat approval from the county.³⁷ Frognal will also have to obtain a
- 8 construction NPDES permit from the Washington State Department of Ecology.³⁸

9 5. Review of Frognal's Proposal

- 10 F.33 Although vested to the county's 2005 drainage manual (which is based on the 1992 drainage
- 11 manual), Frognal agreed to comply instead with the county's 2010 drainage manual, which is based
- 12 on the 2005 Washington State Department of Ecology manual (2005 DoE Manual).
- 13 F.34 The 2005 DoE Manual uses continuous simulation.³⁹ The 2005 DoE manual protects the
- 14 environment better than the 1992 manual, which used single event simulation and did not account
- 15 for low impact development (LID) techniques.⁴⁰
- 16 F.35 PDS used the 2005 DoE Manual to review the proposed drainage plan.⁴¹
- 17 F.36 Required by the 2005 DoE Manual, WWHM is used to determine that the rate and volume of post
- 18 development stormwater discharge matches the pre-development rate and volume of discharge.⁴²
- 19 F.37 DoE prescribes the amount of precipitation used as input to the model.⁴³ The WWHM prescribes
- 20 the use of specific precipitation database files and adjusts the data from the prescribed
- 21 precipitation files for the specific project location. Dr. Bandaragoda's desire to use precipitation
- 22 records from Paine Field would not satisfy Department of Ecology requirements. No good modelling
- 23 other than WWHM exists for the Picnic Point Creek basin.⁴⁴

24 6. Site Conditions

- 25 F.38 There is little to no surface flow of stormwater across the site in its present, undeveloped state, nor
- 26 is there surface flow to the wetland at the bottom of the slope to the northwest of the site.⁴⁵

³⁶ Mr. Lider.

³⁷ Mr. Countryman.

³⁸ Mr. Ash and Randy Sleight, P.E.

³⁹ Mr. Ash.

⁴⁰ Mr. Koger.

⁴¹ Mr. Ash.

⁴² Dr. Burgess.

⁴³ Dr. Burgess.

⁴⁴ Dr. Burgess.

⁴⁵ Mr. Lider, Dr. Burgess, Mr. Koger, and Ex. E-3, p. 3.1-19.

- 1 F.39 Data from the monitoring wells was collected and evaluated from February 2 to March 1, 2006.
2 Rainfall during December 2005-January 2006 rainfall was 17.5 inches, 10 inches more than the
3 average.⁴⁶ The groundwater analysis based on monitoring well data therefore is based upon higher
4 than average precipitation.⁴⁷
- 5 F.40 Monitoring well 1 penetrated the entire thickness of Vashon advance outwash and demonstrated
6 that the layer of outwash would be a good receptor horizon for infiltration. The silty sequence at
7 215 feet below ground surface is the base of the Vashon aquifer system.⁴⁸
- 8 F.41 The groundwater levels identified by the three monitoring wells showed a relative lack of sensitivity
9 to storm events and approximately six inches of seasonal fluctuation.⁴⁹
- 10 F.42 Flow through unsaturated zones increases the duration of time before infiltrated stormwater shows
11 up in the groundwater.⁵⁰
- 12 F.43 The groundwater elevation dropped twenty-five feet between monitoring well 1 and monitoring
13 well 3.⁵¹
- 14 F.44 Groundwater response to precipitation at the Frogal site lags 2 to 4 months. Groundwater
15 observations did not show short term fluctuations. Transient modelling with individual storms on a
16 weekly or daily basis would therefore not add anything to the analysis.⁵²
- 17 F.45 Steady state modelling using wet year data is more conservative than transient modelling because
18 steady state modelling assumes the steady state is the wet year data, whereas transient modelling
19 will assume wet years followed by dry years.⁵³
- 20 F.46 The evaluation performed for the EIS was consistent with, and met, the standard of practice.⁵⁴
- 21 7. Conceptual Design
- 22 F.47 The conceptual design for stormwater management is for most of the runoff to flow toward the
23 interior of the development, where it will be collected in swales that will allow the runoff to
24 infiltrate through the permeable advance outwash exposed by the grading of the site.⁵⁵ Driveways
25 or small berms between swales will act as check dams to detain runoff below the top elevation of

⁴⁶ Mr. Koger.

⁴⁷ Dr. Burgess and Mr. Koger.

⁴⁸ Mr. Koger

⁴⁹ Dr. Miller

⁵⁰ Dr. Burgess and Mr. Koger.

⁵¹ Mr. Koger.

⁵² Dr. Burgess.

⁵³ Dr. Burgess.

⁵⁴ Dr. Miller and Dr. Burgess.

⁵⁵ Mr. Koger.

the small berm or driveway.⁵⁶ Swales atop areas filled with low permeability glacial till will convey the runoff to swales atop the permeable advance outwash.

F.48 The preliminary design includes detention vaults to collect and allow infiltration of any runoff that gets past the swales. Overflow from the west detention vault will be piped by tight line to the public drainage system along Picnic Point Road. Frogna's initial preferred plan had been to convey overflow by open channel downhill from the west detention vault to the wetland below, but changed to the tight line conveyance upon expert recommendation. The EIS identified both the open channel conveyance and the tight line conveyance.

F.49 Backyard soils will be amended to allow infiltration of precipitation. The precipitation that falls on the backyards of the lots on the downhill perimeter of the development will infiltrate to the advance outwash by dressing the top of the backyards with amended soils designed for permeability. This amount of stormwater is much smaller than the majority that will be conveyed to the interior of the site for infiltration. With amendment of backyard soils to improve permeability, no surface flow to steep slopes would result from precipitation falling on the backyards of the dwellings.⁵⁷

F.50 Specific engineering details, such as which linear swales overlie redistributed low permeability glacial, will be provided and reviewed during construction plan review during the permit phases of the project. LID techniques can and must comply with county and Department of Ecology requirements.

F.51 For the purposes of preliminary design and environmental impact analysis, the detention vaults were sized as if no infiltration occurred upstream of the detention vaults. During final engineering design, the size of the detention vaults will be re-calculated, and may well be smaller or even eliminated.⁵⁸

F.52 The detention facility on the west ravine above the wetland is not intended or designed to overflow except in large storm event, such as a hundred year storm.

F.53 Elements of the required Washington State Department of Ecology general construction NPDES permit include pH⁵⁹ and erosion.

F.54 The conceptual project design seeks to infiltrate as much stormwater as possible, even as much as 100%, but the probable amount of stormwater infiltrated will not be calculated until the final engineering design phase.

F.55 Bioretention swales have been successfully used in other projects, such as Highland Park in Seattle and in Everett.

⁵⁶ Mr. Ash.

⁵⁷ Mr. Countryman, Dr. Burgess, Mr. Sleight, and Mr. Koger.

⁵⁸ Mr. Ash; Ex. E-3, 2-44 to 2-53.

⁵⁹ Dr. Miller.

- 1 F.56 The bioretention swales will be lined with matting to prevent erosion. The swales will provide some
2 water quality treatment.⁶⁰
- 3 F.57 The final engineering design phase of a project comes after preliminary plat approval, which is
4 based upon conceptual design. In other words, the issue at the preliminary plat phase is whether
5 the proposed conceptual design is feasible and, if implemented, likely to achieve its objectives.
- 6 F.58 The use of concrete during construction on the site will probably not change the pH of Picnic Point
7 Creek.
- 8 F.59 Daylighting on steep slopes is associated with erosion and landslides. Geotechnical review looked
9 for conditions that would lead to daylighting on steep slopes and found none. Infiltrated
10 stormwater will not daylight on steep slopes.⁶¹
- 11 F.60 Daylighting or mounding of groundwater is not probable if the proposal is constructed as
12 conditioned.⁶²
- 13 F.61 The design of the infiltration system can account for small, thin, discontinuous pockets of low
14 permeability in the advance outwash deposits.⁶³
- 15 F.62 Stormwater flow from built impervious surfaces often has adverse environmental effects down
16 gradient. DoE encourages infiltration as proposed here.⁶⁴ Infiltration provides water quality
17 treatment and minimizes the risk of erosion and sediment transport.
- 18 F.63 Final engineering design of the infiltration system will be based upon infiltration rates observed in
19 the field with an added safety factor as determined by the stormwater manual.⁶⁵
- 20 F.64 The Mukilteo report is inapposite because it assumes attempted infiltration without removal of the
21 low permeability glacial till to expose the permeable advance outwash. The proposed drainage
22 design is consistent with the Mukilteo report to the extent the Mukilteo report notes that
23 permeable material like advance outwash is suitable for infiltration.⁶⁶
- 24 F.65 The analysis and proposed drainage system did not allow for, or assume, stormwater infiltration in
25 swales sited atop till or where till will be used as fill. Where swales sit on top of glacial till, whether
26 existing or fill, such swales act as conveyance systems, not infiltration systems. No credit in sizing
27 the system was given for infiltration from swales atop glacial till.⁶⁷

⁶⁰ Dr. Burgess.

⁶¹ Mr. Koger.

⁶² Stormwater Infiltration Report, August, 2006.

⁶³ Mr. Koger.

⁶⁴ Mr. Koger.

⁶⁵ Mr. Koger.

⁶⁶ Dr. Burgess.

⁶⁷ Dr. Burgess.

1 F.66 The design criteria of 1.5 inches/hour infiltration for compost amended soils on the project site
2 assumes an infiltration rate of 6 inches/hour with a safety factor of 4. The stormwater manual
3 requires a maximum infiltration rate of 2.4 inches/hour. The current stormwater manual assumes a
4 maximum infiltration rate for compost amended soil of 12 inches/hour with a safety factor of 4, i.e.,
5 3 inches per hour. The infiltration design criteria of 1.5 inches/hour complies with the 2005 DoE
6 Manual.⁶⁸

7 F.67 The typical process for development requires the applicant to submit narrative and sizing
8 information, including design engineering calculations, to PDS to demonstrate that the existing
9 roadside stormwater conveyance system has sufficient capacity to accommodate the proposed
10 project. If the roadside stormwater conveyance system does not have sufficient capacity, an
11 applicant usually is required either to enlarge the public conveyance system or to store more runoff
12 before it enters to the public conveyance system.⁶⁹ In this case, Frognal will be required to
13 demonstrate prior to construction plan approval that the public conveyance system has adequate
14 capacity to accommodate the proposed project, that the public conveyance system will be enlarged
15 by Frognal at its cost to increase the capacity of the public conveyance system, or that Frognal will
16 increase its storage of stormwater to meter the runoff consistent with the public conveyance
17 existing capacity.

18 8. Interflow

19 F.68 The analyses supporting the EIS did not investigate or analyze interflow, i.e., the path of water from
20 the surface to groundwater. No investigation or analysis of potential preferential pathways or
21 lateral flow was performed. The analyses assumed the path of stormwater infiltrated from the
22 surface to the groundwater approximates a vertical cone.

23 F.69 Modelling of interflow is unnecessary where, as here, stormwater is conveyed to permeable
24 outwash for infiltration.⁷⁰

25 F.70 Uncertainty analysis and probabilities were not used in the groundwater modeling supporting the
26 EIS. Newer versions of MODFLOW give more detailed analysis of interflow and account for
27 saturated and unsaturated conditions.

28 F.71 Analysis using MODFLOW computer modelling simulation is not required by regulation or law,⁷¹ but
29 was performed assuming fully saturated conditions, which is a worse case than unsaturated
30 conditions.⁷²

31 F.72 Additional modelling will be part of the full drainage report prepared as part of the final engineering
32 design for the LDA permit.

⁶⁸ Dr. Burgess.

⁶⁹ Mr. Sleight.

⁷⁰ Mr. Koger.

⁷¹ Dr. Bandaragoda.

⁷² Dr. Burgess.

1 9. SWPPP

2 F.73 A level 3 surface water pollution prevention plan (SWPPP) is for projects with high erosion potential
3 and involve the state Department of Ecology. PDS requires a level 3 SWPPP for this project.⁷³

4 F.74 The final level 3 SWPPP is not required for preliminary plat approval, but is required for the LDA
5 permit.⁷⁴

6 F.75 A level 3 SWPPP adequate to prevent erosion and sediment transport is possible.⁷⁵

7 F.76 Frogmal submitted a preliminary SWPPP as an attachment to the targeted drainage plan.⁷⁶

8 F.77 Best management practices (BMP) for stormwater management are dynamic and may change as
9 conditions in the field change.⁷⁷

10 F.78 The only time in which there would be a significant chance of sediment transport from the project
11 site to Picnic Point Creek would be during construction.⁷⁸

12 F.79 The proposed project will create temporary berms during construction as needed to prevent
13 stormwater from leaving the site.⁷⁹

14 10. Stormwater Discharge

15 F.80 The potential open bottom detention facility at the top of the west ravine is not within the landslide
16 hazard area, as landslide hazard area is defined by county code.⁸⁰

17 F.81 Discharge of overflow stormwater from the proposed detention vault at the top of the west ravine
18 is identified in the EIS.

19 F.82 Any stormwater drainage from the eastern portion of the site would go through Lot 24 down 136th.
20 Any overflow from the open bottomed detention facility at the top of the western ravine would be
21 tight lined⁸¹ to the municipal separate storm sewer system (MS4), either through the 1949 Richard
22 Road easement⁸² or through the utility easement north of Lot 14 to catch basin 8. It would then
23 ultimately flow into the wetlands.⁸³

⁷³ Dr. Burgess.

⁷⁴ Ex. M.9.

⁷⁵ Mr. Lider. In his view, Baker tanks and chitosan enhanced sand filtration would be appropriate.

⁷⁶ Ex. C.3.3, p. C7.

⁷⁷ Mr. Countryman.

⁷⁸ Dr. Bandaragoda and Mr. Lider.

⁷⁹ Mr. Ash.

⁸⁰ Dr. Burgess.

⁸¹ Tightlining overflow from the west vault is described on page 11 of the targeted drainage report. Mr. Ash.

⁸² Ex. O.11.

⁸³ Mr. Ash.

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- 1 F.83 Final engineering design requires a final decision on the size of the west side detention vault.
2 Assuming, a detention facility at the top of the west ravine is ultimately required during final
3 engineering review, Frogmal must demonstrate that it has the legal ability to discharge any overflow
4 from the vault to the wetland either by the Richard Road easement or by the easement behind Lot
5 14 to catch basin 8.⁸⁴
- 6 F.84 Catch basin 8 is presently designed to prevent backflow in to the Regatta Estates detention pipe. In
7 addition, the Regatta Estates detention pipe is uphill from the catch basin.
- 8 F.85 Frogmal will be required to provide a final engineering design of a stormwater management system
9 that is of adequate size and capacity. If the catch basin 8 route is the final engineering design
10 choice, engineering design will include a review of the capacity of the catch basin to handle project
11 flows and, if necessary, the county would require Frogmal to increase the capacity of the catch
12 basin.
- 13 F.86 Back flow into the Regatta Estates detention pipe is not likely.
- 14 F.87 The sixty foot easement has not been extinguished or released.⁸⁵
- 15 F.88 The proposed conceptual drainage plan is feasible and achievable.
- 16 Tight Line
- 17 F.89 The change from open channel conveyance from the detention down the west ravine to the
18 wetlands to tight lined conveyance from the detention facility to the MS4 facilities is not a material
19 change to the conceptual design.
- 20 F.90 The tight lined conveyance of overflow from the west vault is expressly acknowledged as an
21 alternative in the EIS and is neither new nor a change outside the scope of the EIS.⁸⁶
- 22 F.91 The pipe used to convey potential overflow from the west vault would usually be made of HDPE
23 (high density polyethylene) with welded seams, which is standard in the industry. Welded seams
24 result in a strong pipe. There has not been a failure of HDPE pipe in Snohomish County. A break at
25 the seam would be unusual.⁸⁷
- 26 F.92 The construction technique normally chosen to install HDPE pipe on a hillside is the one that
27 minimizes ground disturbance. For example, in a plat to the west of this proposed plat, which is in
28 an area with more slope movement than the Frogmal area, the HDPE creeps with the hillside, placed
29 on the surface, and is routed around trees.⁸⁸ Directional drilling is also an option.

⁸⁴ Mr. Sleight.

⁸⁵ Ex. 173.

⁸⁶ Ex. C.20, p. 11; DEIS 2.46; FEIS 3.19. DEIS, Ex. E-3, p. 3.2-19; DEIS, Ex. 4A *Targeted Drainage Report*, p. 11.

⁸⁷ Mr. Sleight.

⁸⁸ Mr. Sleight.

- 1 F.93 The east ravine of the west threshold discharge area does not drain to the east, but instead
2 discharges into the wetland below Frogal. The proposed drainage system maintains the drainage
3 of the east and west ravines of the western threshold discharge area into the wetlands, whether by
4 the Richards Road easement or by catch basin 8, as it exists now before any development.⁸⁹
- 5 F.94 Whether Frogal stormwater from the west ravine discharges to catch basin 8 or a new pipe, it
6 discharges well within the quarter mile criterion of minimum requirement 4 of the 2005 DoE
7 Manual.⁹⁰
- 8 F.95 As designed, the stormwater infiltration system will increase fluctuations in the offsite wetland, but
9 will probably not negatively affect either the wetlands or Picnic Point Creek.⁹¹
- 10 F.96 Hydroperiod modelling was not part of the WWHM when the analyses were done. The hydroperiod
11 was analyzed by using the groundwater model and backing out the discharge to the wetland. The
12 model was then run with developed conditions and included increased filtration and discharge to
13 the wetlands by 25%.⁹² The model showed that if the wetland were an open channel on shallow
14 gradient and 100 feet wide, the water level would go up less than half an inch. Changing the
15 assumption from a single open channel 100 feet wide to one foot wide parallel channels separated
16 by raised ground one foot wide resulted in a water level change of less than half an inch. Therefore,
17 the proposed drainage system is not likely to materially affect the hydroperiod of the wetlands and
18 will probably not cause significant adverse impacts to the wetlands.⁹³
- 19 F.97 The wetland is due to groundwater seepage and therefore will not be adversely affected if potential
20 stormwater overflow from the west vault is routed either to catch basin 8 or to the public roadside
21 conveyance systems.⁹⁴
- 22 **11. Picnic Point Creek**
- 23 F.98 Infiltrated water that reaches Picnic Point Creek will not likely materially change the temperature of
24 the creek because of the substantial thermal mass through which infiltrated water will pass, cooling
25 the water to the ambient temperature of the thermal mass.⁹⁵
- 26 F.99 Infiltrated water that reaches Picnic Point Creek will not likely adversely affect water quality of the
27 creek because the geologic units through which the water infiltrates will filter the water.
- 28 F.100 The Frogal site is less than two percent of the Picnic Point Creek basin. Stormwater from Frogal
29 accounts for .23% of Picnic Point Creek stream flow.⁹⁶

⁸⁹ Dr. Burgess.

⁹⁰ Dr. Burgess; Ex. O.7.

⁹¹ Mr. Koger.

⁹² From 9 gpm to 11 gpm.

⁹³ Dr. Burgess.

⁹⁴ Dr. Burgess.

⁹⁵ Dr. Burgess.

⁹⁶ .25 cfs out of 109 cfs. Dr. Burgess.

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- 1 F.101 The Frognal property line closest to Picnic Point Creek is 500 feet from the creek, and the closest
2 developed area would be 640 feet from the Creek.⁹⁷ The FEIS describes the Snohomish County 150-
3 foot stream buffer requirement for salmon-bearing streams, and restrictions on impervious
4 surfaces within a 300 foot Riparian Management Zone, as well as the distance and substantial
5 existing intervening developed area between Frognal Estates and the creek.⁹⁸
- 6 F.102 A culvert under Picnic Point Creek blocks salmonids from traveling to the upper reaches of the
7 creek.⁹⁹ Stormwater from the Frognal site, whether infiltrated into the groundwater or surface flow
8 discharged into the wetland, will reach the creek well before the blocking culvert.
- 9 F.103 Salmonids are affected by a stream's water temperature; too high a temperature will stress the fish
10 and could cause death.¹⁰⁰
- 11 F.104 Sediment in salmonid rearing streams clogs interstitial spaces, suffocating eggs in the redds.¹⁰¹
- 12 F.105 Adverse environmental impact on salmonid habitat in Picnic Point Creek is not probable if best
13 management practices and existing, known construction techniques and conditions are used and
14 implemented.
- 15 F.106 Sediment transport into Picnic Point Creek is not probable if the project is constructed as proposed
16 and conditioned.

17 12. Retaining Walls

- 18 F.107 The stacked retaining walls will not intercept or cutoff groundwater because groundwater is below
19 the stacked retaining walls.
- 20 F.108 The slope stability analysis supporting the EIS had six transects, which are intended to be the least
21 stable sections.¹⁰²

22 13. Other

- 23 F.109 A homeowners' association can adequately maintain and operate stormwater facilities.
- 24 F.110 The Washington Department of Fish and Wildlife do not identify any protected species on the
25 Frognal site.

⁹⁷ Ex. N-15.

⁹⁸ Ex. E-5, p. 2-20.

⁹⁹ Ex. O.19.

¹⁰⁰ Mr. Murdoch.

¹⁰¹ Mr. Murdoch.

¹⁰² Mr. Miller.

- 1 F.111 The county's programmatic EIS for the comprehensive plan updates and designation of urban
2 growth areas considers the environmental impacts on wildlife habitat, traffic, schools, and public
3 safety.¹⁰³
- 4 F.112 Schools and the county account for development in the school district capital facility plans, which
5 are updated every few years and which the county adopts as part of its comprehensive plan.¹⁰⁴
- 6 F.113 Development impact on fire service is similarly not considered in a project EIS because project level
7 fire safety is accounted for by compliance with the fire and building codes and because fire districts
8 create capital facilities plans like school districts. For example, Fire District No.1 plans a new fire
9 station on Lincoln Road a mile away to replace an existing, smaller station.¹⁰⁵ Fire District No. 1 did
10 not object or express any concerns about the proposed subdivision.
- 11 F.114 The county's capital facilities plan accounts for transportation needs and mitigation fees are
12 collected for, and used in, transportation service areas.¹⁰⁶
- 13 F.115 Less density than that proposed by Froggnal would be inconsistent with county code and
14 comprehensive plan requirements regarding minimum net density.¹⁰⁷

15 14. Slope Stability

- 16 F.116 Regrading the site can enhance the stability of the site's slopes.¹⁰⁸
- 17 F.117 Slice analysis is the standard of practice and was used here, allowing modelling of noncircular slip
18 surfaces. Plane strain modelling is not the standard of practice.¹⁰⁹
- 19 F.118 The purpose of requiring global stability analysis is to ensure the stability of the slope on which the
20 proposed retaining walls are built.¹¹⁰
- 21 F.119 There are no computer models that directly measure slope stability.¹¹¹

22 15. Traffic

- 23 F.120 The original traffic study in 2005 assumed 117 dwelling units. The study was updated in 2015.¹¹²

¹⁰³ Mr. Countryman.

¹⁰⁴ Mr. Countryman.

¹⁰⁵ Mr. Countryman.

¹⁰⁶ Mr. Countryman.

¹⁰⁷ Mr. Countryman.

¹⁰⁸ Dr. Miller and Dr. Burgess.

¹⁰⁹ Dr. Burgess.

¹¹⁰ Mr. Sleight.

¹¹¹ Dr. Miller.

¹¹² Mr. Koltonowski.

- 1 F.121 All arterial units operated within acceptable levels of service as defined by county code using the
2 latest methodology.¹¹³
- 3 F.122 Potential inadequate road conditions (IRC) as defined by county code were investigated for collision
4 history, road width, etc. Based on forecasted traffic, the IRC indices for the potential IRCs were all
5 less than 40, which is the threshold level for an IRC determination.¹¹⁴
- 6 F.123 There is no history of vehicle collisions with pedestrians in the area.¹¹⁵
- 7 F.124 Government records identify only two collisions in the area, one during a u-turn and the other not
8 related to traffic at or around Picnic Point Elementary School.¹¹⁶
- 9 F.125 Frogmal demonstrated by a preponderance of evidence the feasibility of developing the site as
10 proposed. The project can be designed during the engineering design phase for the appropriate rate
11 of infiltration to for water quality purposes. While Preservation Committee disputes whether the
12 correct rate of infiltration has been identified, the preliminary plat approval phase is based upon
13 conceptual approval, i.e., whether the design concepts are feasible, not whether the engineering
14 details or specifics are have been completed or are correct in all respects. The details will be
15 reviewed for accuracy and adequacy at the project permit review level. From a conceptual
16 standpoint, the proposed design is feasible.
- 17 F.126 The proposed pre-conditions do not materially change the proposal, but correct minor errors.¹¹⁷
- 18 F.127 The development is capable of being constructed using restrictions, construction techniques, low
19 impact development techniques, and best practices that will eliminate the likelihood of significant
20 adverse environmental impacts, such as sediment transport to Picnic Point Creek.
- 21 F.128 The final environmental impact statement was a reasonably thorough discussion of the significant
22 aspects of the probable environmental consequences.
- 23 F.129 The proposed project alternative of 112 multifamily units was consistent with Frogmal's proposed
24 objectives with 112 single family units.¹¹⁸ Less than 112 dwelling units did not meet Frogmal's
25 objectives.

26 **B. Discussion**

27 The Preservation Committee's expert conceded that the modelling of the geology and hydrology is
28 consistent with the current standard of practice in those engineering disciplines. In effect, Preservation
29 Committee effectively asks the Examiner to change the current standard. The legal test, however, for

¹¹³ Mr. Koltonowski.

¹¹⁴ Mr. Koltonowski; Ex. C.2 I.21-I.23.

¹¹⁵ Mr. Koltonowski.

¹¹⁶ Mr. Koltonowski.

¹¹⁷ Mr. Countryman.

¹¹⁸ Mr. Countryman.

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1 adequacy of the EIS is not what the Hearing Examiner, or Preservation Committee, thinks is appropriate,
2 but whether the EIS and its supporting reports and methodologies were within the range of
3 reasonableness. Irrespective what the Examiner thinks might be the best science or the methodology, the
4 Examiner must give substantial weight to the judgement of PDS and the Examiner cannot conclude that
5 methodologies that meet the current standard of engineering practice are unreasonable.

6 Preservation Committee criticizes the lack of an opportunity to comment on the county's review of final
7 engineering design before issuance of permits. However, the Local Projects Act requires a single open
8 record hearing for public comment and Preservation Committee essentially asks for multiple hearings on
9 the same project, in violation of the Local Projects Act.¹¹⁹ Preservation Committee is not without remedy,
10 however, because legal remedies are available for issuance of LDA or building permits in violation of law.

11 Comparison of the no action alternative and proposal create bookends for environmental review, but do
12 not require multiple alternatives covering the spectrum between no action and the proposal.

13 Dr. Miller argues that doing many more transects in the slope stability analysis should be done because it is
14 much easier to create numerous transects now with the computing models than it used to be and more
15 information is better. Dr. Miller agreed that transects are chosen for the potentially least stable locations.
16 The legal test for sufficiency of the EIS is not whether more is better, but whether the responsible SEPA
17 official had sufficient information or failed to provide a reasonably thorough discussion of the potential
18 environmental consequences of the project. Similarly, the test for approval of the preliminary plat is
19 whether the proposal appears that it will comport with public health, safety, and welfare, giving substantial
20 weight to PDS recommendation. This record does not support finding either that the slope stability analysis
21 performed for the EIS with six transects through the most unstable regions and the requirement of
22 additional modelling is insufficient information or not a reasonably thorough discussion of the potential
23 environmental consequences.

24 Dr. Bandaragoda testified that the lack of sensitivity analysis and probability precludes analysis of potential
25 impacts. However, the impact of an event that overwhelms the planned drainage system is disclosed in the
26 EIS, e.g., sediment transport and erosion.

27 C. Conclusions of Law

28 C.1 The Hearing Examiner gave substantial weight to PDS's determination. *King County v. CPSGMHB*, 91
29 Wn. App 1, 30, 951 P.2d 1151 (1998); RCW 43.21C.090 (1973); SCC 30.61.310(3) (2003).

¹¹⁹ Preservation Committee argues that such details must be reviewed at the preliminary plat review level because of the lack of public input and review at the project permit level. State law does not allow multiple hearings and public comment for a project and county code does not structure the development process to provide for multiple hearings in violation of state law. RCW 36.70B.050 (1995); title 30 SCC.

- 1 C.2 It is not necessary to determine at the preliminary plat stage whether the path of potential overflow
2 discharge from a potential west ravine detention facility will be by the Richard Road easement or by
3 catch basin 8; it is sufficient that there are feasible pathways.
- 4 C.3 A preponderance of the evidence did not leave the Examiner with the definite and firm conviction
5 that PDS was mistaken in limiting the environmental impact statement to the Earth and Water
6 elements. *PT Air Waters v. Department of Ecology*, 179 Wn.2d 919, 926, 319 P. 3d 23 (2014).
- 7 C.4 PDS' limited scope EIS complied with WAC 197-11-408(1), which requires limiting the scope of the
8 environmental impact statement to the probable significant adverse impacts, reasonable
9 alternatives, and mitigation measures.¹²⁰
- 10 C.5 Speculative or insignificant impacts do not require an EIS. WAC 197-11-408.
- 11 C.6 An alleged impact addressed in an existing comprehensive plan or development regulation does not
12 require a new EIS. RCW 43.21C.240 (2003).
- 13 C.7 No adverse impact to schools, fire safety, wildlife or wildlife habitat, or water quality or fish habitat in
14 Picnic Point Creek was demonstrated by a preponderance of evidence. Such alleged impacts are
15 therefore speculative and are not required to be addressed in the EIS. *Boehm v. City of Vancouver*,
16 111 Wn. App. 711, 714, 720, 47 P.3d 137 P.3d 137 (2002).
- 17 C.8 The potential or actual impacts of the project to general wildlife habitat, transportation (both
18 vehicular and pedestrian), schools, fire services, and cumulative impacts do not need to be addressed
19 in the Frogmal EIS because they were addressed in the programmatic EIS for the comprehensive plan
20 adopted in December 2005.
- 21 C.9 Preservation Committee did not prove by a preponderance of evidence that the EIS failed to disclose
22 unmitigated significant adverse environmental impacts resulting from the proposal.
- 23 C.10 The responsible SEPA official did not lack reasonably sufficient information or failed to consider
24 probable, significant adverse environmental impacts. *Indian Trail Property Owner's Assn. v. City of*
25 *Spokane*, 76 Wn. App. 430, 441, 886 P.2d 209 (1994); SCC 30.61.310(3) (2003).
- 26 C.11 The limited scope EIS was a reasonably thorough discussion of the significant aspects of the probable
27 environmental consequences. *Citizens Alliance v. City of Auburn*, 126 Wn.2d 356, 361-62, 894 P.2d
28 1300 (1995). Taken as a whole and considering the reports and additional peer review and research
29 of Frogmal's reports on the subjects of drainage (subsurface and surface), soil conditions, slopes,
30 slope stability,¹²¹ landslide potential, and potential downstream impacts, including water quality and

¹²⁰ "The lead agency shall narrow the scope of every EIS to the probable significant adverse impacts and reasonable alternatives, including mitigation measures. For example, if there are only two or three significant impacts, or alternatives, the EIS shall be focused on those." WAC 197-11-408(1) (2016).

¹²¹ Slope stability generally (Ex. E-5, 2-32 to 2-33, 2-43, 2-81, 2-82, and 2-110) and as it relates to grading (Ex. E-3, 2-21 through 2-28), topography (Ex. E-3, 3.1-1 through 3.1-5), and geography and soils (Ex. E-3, 3.1-5 through 3.1-19).

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fish habitat, the EIS was a reasonably thorough discussion of the significant aspects of probable environmental consequences and established conditions to mitigate such consequences.¹²²

IV. PLAT ALTERATION

A. Findings of Fact

F.130 Frogna! Estates is a proposal for a 112-lot planned residential development site plan and preliminary subdivision of 22.34 acres in and adjacent to the Harbour Pointe Master Planned Community near the City of Mukilteo. The underlying property is an assemblage of three vacant parcels.

F.131 One of the three parcels of the proposed project is Lot 1 of the Plat of Regatta Estates. The Plat of Regatta Estates is recorded under Snohomish County Recording No. 9602215004. The project proposes to subdivide Lot 1 into 38 new lots.

F.132 Generally, the lots in the Regatta Estates Plat are between 5,000 sq. ft. and 20,000 square feet in size. As platted, however, Lot 1 is 277,625 net square feet (6.4 acres).¹²³

F.133 The plat of Regatta Estates was approved in 1992. At that time, the owner and developer, Shergar Land Corporation, did not own the approximately 15 acres to the west. The 15 acres consists of two tax parcels: 00473300002800 (9.71 acres) and 00473300002701 (4.71 acres).

F.134 The Hearing Examiner's preliminary plat approval decision for Regatta Estates (PDS file No. ZA 8906267), found this 15-acre parcel was constrained by steep slopes and wetlands, leaving very limited options for access to the then-existing public road system.¹²⁴

Adequate provisions for public roads would not be present if public road access through proposed Lot 1 to the undeveloped parcel west of Parcel A is not guaranteed: the only realistically developable access to the useable portion of that parcel is through Lot 1. A public road right-of-way is needed, but the instant applicant need not construct a road therein beyond the point necessary to access each lot within Regatta Estates. The right-of-way alignment must be chosen to provide a buildable county road in the future to access the developable portion of the adjacent [15-acre] parcel.¹²⁵

¹²² Examples include discussions of stormwater runoff (Ex. E-5, 2-20 and 2-112 to 2-113), temporary erosion and sediment control during construction (Ex. E-3, 2-28 through 2-31), developed condition stormwater management proposal (Ex. E-3, 2-44 through 2-53), surface water movement, quantity and quality (Ex. E-3, 3.2-18 through 3.2-20), and mitigation measures for stormwater management (Ex. E-3, 3.1-21 through 3.1-25).

¹²³ Ex. M-16.1. As a result of a 2005 boundary line adjustment, Lot 1 is now about 7.46 acres.

¹²⁴ Ex. O-33A and O-33C.

¹²⁵ Examiner's decision, Conclusion 31.

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1 F.135 The Examiner also imposed Condition G(iv), requiring the following statement on the final plat of
2 Regatta Estates;¹²⁶

3 A 60 foot wide public road right-of-way shall be shown for dedication through proposed
4 Lot 1 to the west edge of said lot. The alignment of said right-of-way shall be selected so
5 as to provide the potential for future construction of a public road meeting county
6 design standards. The location of said right-of-way alignment shall be subject to prior
7 Department of Public Works approval.

8 F.136 The recorded plat of Regatta Estates Plat at Sheet 2 shows a roadway connecting from the
9 northwest terminus of 58th Place West through Lot 1 and connecting to the 15-acre parcel to the
10 west, complying with condition G(vi) of the Examiner's decision.

11 F.137 The Examiner also required that Condition G(x) be indicated on the face of the final plat:

12 Proposed Lot 1 shall be treated essentially as a Native Growth Protection Area provided that a
13 single homesite with access thereto may be developed on said lot. Site development plans for
14 the access driveway and homesite, including clearing and revegetation plans and detailed
15 geotechnical analysis will be required to have received approval from the Planning Division prior
16 to the issuance of any site development permits or any disturbance of said Lot.

17 This condition is stated on the face of the Regatta Estates Plat on Sheet 1, paragraph 9, under the
18 title Restrictions ("Restriction 9").¹²⁷

19 F.138 Lot 1 is the only lot in Division 6.

20 F.139 Each division of Regatta Estates has its own architectural control committee. A division's
21 architectural control committee is appointed by the board of the homeowners' association from the
22 homeowners of the division. If the board does not appoint homeowners to the committee, the
23 board serves as the committee until the board appoints the committee.

24 F.140 The Regatta Estates homeowners' association board has not appointed an architectural control
25 committee for Division 6 (Lot 1). If it does before Lot 1 is subdivided, it must appoint Frogmal. If it
26 does so after Lot 1 is subdivided, the committee members must be homeowners in the new
27 subdivision.

28 F.141 Lot 1 was recorded as a "Lot," and not as a protected tract.¹²⁸

29 F.142 Lot 1 is not recorded or identified as an NGPA, though it is recorded as "essentially like" an NGPA.

30 F.143 Frogmal is the sole owner of Lot 1.

¹²⁶ Exhibits O.33A and O.33C.

¹²⁷ Ex. M-16.1.

¹²⁸ *Id.*

- 1 F.144 Frogna1 is the sole signature on the application for alteration of the plat.
- 2 F.145 Regatta Estates' home owners in other divisions of the Regatta Estates subdivision are not directly
3 affected by the proposed plat alteration.
- 4 F.146 Only Lot 1 is directly affected by the proposed plat alteration.
- 5 F.147 Neither the Hearing Examiner's preliminary plat decision nor the face of the Regatta Estates Plat
6 prohibit subdivision of the 6.4 acres in Lot 1.
- 7 F.148 The Regatta Estates Plat anticipates future subdivision of all Lots within the plat, including Lot 1,
8 when at Restriction paragraph 1, the Final Plat states: "No further subdivision of any lot without
9 resubmitting for formal plat procedure." (Emphasis added).¹²⁹
- 10 F.149 All 78 lots in the Regatta Estates Plat are subject to, and bound by, the Declaration of Covenants,
11 Conditions, Restrictions and Easements for Regatta Estates, recorded under Snohomish County
12 Recording No. 9605290598 ("Declaration"), which was recorded in 1996 shortly after the recording
13 of the Regatta Estates Plat.¹³⁰
- 14 F.150 Section 7.1 of the Declaration states:
- 15 With the exception of Lot 1, all lots within the Plat of Regatta Estates are in their final
16 developed size and configuration. Lot 1, however, is an over-sized lot which the
17 Declarant intends, at some time in the future, to subdivide. The owners of lots in the
18 Plat of Regatta Estates shall take ownership subject to the right of the Declarant or its
19 successor to further subdivide Lot 1 pursuant to applicable rules, ordinances or
20 regulation, of the governmental entity regulating development of the same.
21 Accordingly, no lot owner shall have the right to protest or object to the Declarant or its
22 Successors efforts to subdivide said real property so long as such subdivision is being
23 requested or completed consistent with the rule, and regulations of the municipality
24 regulating development at the time of such subdivision.
- 25 F.151 The Declaration was recorded before any lots in Regatta Estates were conveyed to owners other
26 than the original developer, Shergar Land Corporation.
- 27 F.152 Lot 1 of Regatta Estates lies within Sectors 22 and 23 of the Harbour Point Master Plan area. Under
28 the Harbour Pointe Master Plan, redevelopment within any Sector of the Harbour Pointe Master
29 Plan area requires an approved Division of Development ("DoD") plan. The Snohomish County
30 Planning Director is the approval authority for DoD plans.
- 31 F.153 The County issued a DoD Decision for the Project on September 10, 2015, which was subsequently
32 revised in Corrected Division of Development Decision, dated September 23, 2015 ("CDoD
33 Decision"). The CDoD Decision states that the Project "is consistent with the Possession Shores

¹²⁹ *Id.*

¹³⁰ Ex. M-16.2.

(Harbour Pointe) Master Plan/Rezone Contract and with Sector 22 and Sector 23 Plans, and is receiving approval subject to" certain conditions of approval, including the following Condition 2:

2. Recording of a plat alteration for Regatta Estates that accomplishes the following:

- a. Removal of Restriction No. 9, which required Lot 1 to be treated "essentially" as a Native Growth Protection Area;
- b. Any ownership interest owner (or owners) of Lot 1 of Regatta Estates has (have) in Tracts 986 through 990 and 992 through 997 of Regatta Estates shall be diluted based on the number of new lots created on Lot 1 of Regatta Estates.

F.154 No evidence was adduced that identified a conflict of interest regarding the engagement of landscapers to maintain the landscape of Lot 1 versus the other divisions of Regatta Estates.

F.155 No evidence was adduced that described a conflict of interest between Lot 1 and the other divisions with respect to maintenance of stormwater facilities.

F.156 Lot 1 was not posted as an NGPA.

F.157 No evidence was adduced that identified that dilution of Lot 1's undivided 1/78th interest in the common areas of Regatta Estates would operate to the detriment of the other homeowners of Regatta Estates, especially where it is up to the board of the Regatta Estates homeowners' association to determine an equitable method of apportioning costs of maintaining stormwater facilities. No evidence supported the bald assertion that subdivision of Lot 1 would allow those homeowners to escape an obligation to maintain stormwater facilities.

F.158 No evidence was adduced that proved a conflict of interest would necessarily result from a homeowner in Lot 1 being a member of two homeowners' associations.

B. Analysis

At PDS' insistence, Frogna! Estates applied to alter the recorded final subdivision of Regatta Estates by removing item 9 on the Regatta Estates' plat map restrictions.¹³¹

Lot 1 shall be treated essentially as a native growth protection area provided that a single homesite with access thereto may be developed on said lot. Site development plans for the access driveway and homesite including clearing and revegetation plans and detailed geotechnical analysis will be required to have received approval from the planning division prior to the issuance of any site development permits or any disturbance of said lot.

¹³¹ Frogna! Estates insists that an alteration is not necessary, but acquiesced to PDS. Frogna!'s lament notwithstanding, its alteration application has not been withdrawn, is pending, and properly before the Hearing Examiner for decision.

1 State law and Snohomish County Code establish criteria and procedures for altering a recorded final
2 subdivision.¹³² The Preservation Committee argues the application should be rejected because the
3 application was not signed by a majority of the owners of lots in Regatta Estates and because it believes
4 that the alteration would result in violation of existing Regatta Estates' restrictive covenants. Frogna
5 rejoins that the alteration only affects Lot 1, of which it is the owner, and therefore all the owners of the
6 affected lots (i.e., Lot 1) signed the application. Frogna also rejects Picnic Point Preservation Committee's
7 argument that alteration of the Regatta Estates necessarily violates existing Regatta Estates' restrictive
8 covenants. For the reasons explained below, the Hearing Examiner agrees with Frogna's analysis.

9 1. Majority of Affected Lots Must Sign the Application

10 The application for alteration must have the signatures of "a majority of those persons having an ownership
11 interest in lots, tracts, parcels, sites, or divisions in the subdivision or portion to be altered."¹³³ The
12 application contains only the signature of Frogna. Preservation Committee claims the application is
13 incomplete, lacking signature of another 39 lot owners in the subdivision to be altered.¹³⁴ Frogna is the sole
14 owner of the only lot to be altered and therefore contends its signature fulfills the requirement of a
15 majority signing the application.

16 There is little direct authority to answer the question. The leading treatise on Washington real estate does
17 not clearly settle the issue: "Only a majority of the persons having an ownership interest in the area to be
18 affected by an alteration need sign the application." 17 Wash. Prac., Real Estate § 5.9 (2d ed.). Is the "area
19 to be affected" just the lot(s) directly changed by the plat alteration, or the surrounding lots that may
20 affected indirectly?

21 None of the parties cited, nor did the Hearing Examiner find, any published decisions by Washington
22 appellate courts answering the question. In an appeal from Snohomish County, the Shoreline Hearings
23 Board appeared to rule that a majority of the property owners "involved" needed to sign the application,
24 but "involved" is no more illuminating than "altered" or "affected".¹³⁵

25 The most appropriate reading of the ordinance and statute is that a majority of the lots directly affected by
26 the alteration must agree to the application. Approval of a majority of the entire subdivision is not
27 required. The purpose of chap. 58.17 is to protect land owners from involuntary changes to the legal status
28 of other property that directly affects their property's legal status or burdens. For example, the previous
29 section of RCW chap. 58.17 clearly indicates that vacation of a subdivision in whole or part requires

¹³² RCW 58.17.215 (1987); SCC 30.41A.700(1) (2003). Neither party identified any differences between state law and county code.

¹³³ *Id.*

¹³⁴ Regatta Estates has 78 lots. A majority would therefore be the owners of 40 lots.

¹³⁵ "RCW 58.17.215 basically requires that only a majority of the property owners involved must sign the application, that the legislative body must 'determine the public use and interest in the proposed alteration' and may deny or approve the alteration and that the applicant is to be ordered 'to produce a revised drawing of the approved alteration of the final plat' if the alteration is approved." *Lofgren v. Snohomish County*, SHB no. 88-1 (Feb. 17, 1989), 1989 WL 77343, at *11.

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1 “signatures of all parties having an ownership in **that portion of the subdivision subject to vacation.**” RCW
2 58.17.220 (1987) (emphasis added). An owner in “that portion of the subdivision subject to vacation” is
3 statutorily protected from involuntary vacation of the subdivision. Approval of a subdivision alteration that
4 would violate a restrictive covenant requires the approval of **“all parties subject to the covenants”** of
5 alteration or termination of the covenants that would be violated. RCW 58.17.250 (emphasis added.) The
6 pattern of chap. 58.17 RCW is to require approval of all or a majority of property owners **directly affected**
7 by the proposed change, not all property owners in the subdivision. The legislature could have required a
8 majority of owners of the subdivision to apply for the alteration, but chose instead to require the approval
9 only of those directly affected by the alteration.

10 Restriction no. 9 mentions only Lot 1 and applies only to Lot 1. It does not apply to, or restrict, any other
11 lot. Therefore, the signature of Frogmal as the sole owner of Lot 1 is sufficient to consider the alteration of
12 Lot 1.

13 Preservation Committee cites *Jones v. Town of Hunts Point*, 166 Wn. App. 452, 272 P.3d 853 (2012) to
14 support its opposition, but Jones is inapposite factually and legally. Jones sought to short plat a 24,045
15 square foot lot in Hunts Point. The face of the 1951 plat contained the following restriction:

16 No lot or portion of a lot in this plat shall be divided or resold, or ownership changed or
17 transferred, whereby the ownership of any portion of this plat shall be less than the area
18 shown on the face of this plat.

19 *Id.* at 456. Hunts Point rejected the short plat application, citing this restriction against short plats. The
20 court of appeals held, *inter alia*, that Hunts Point had the authority to enforce the restriction, the restriction
21 was a condition of approval of the plat, and that Hunts Point had not abandoned the restriction by
22 inconsistent application.¹³⁶ Jones is factually dissimilar, especially in that the restriction on subdivision
23 applies to **all** of the lots in the plat. Here, the restriction applies **only** to Lot 1. The Jones court required all of
24 the owners of lots in the plat to agree to the plat alteration because the restriction applied to all lots in the
25 plat.

26 [T]he town engineer noted that Jones did not submit an agreement to alter the restriction
27 signed by other property owners **who are subject to the restriction**. The town engineer was
28 correct to insist on such an agreement before allowing Jones to proceed.

29 *Id.* at 459 (emphasis added). All the property owners in the Hunts Point plat were subject to the restriction.
30 Here, only Lot 1 is subject to restriction no. 9. Thus, the only property owner subject to the restriction is
31 Frogmal and only Frogmal’s signature is required on the application.

¹³⁶ Although Frogmal claimed that its development proposal does not require altering the Regatta Estates plat to remove restriction no. 9, Jones supports PDS’ and Preservation Committee’s position that restriction no. 9 must be altered to develop Lot 1. See Appellant’s Hearing Memorandum, 17:12-15.

1 2. Constructive NGPA Is Not an NGPA

2 To the extent Preservation Committee argues that restriction 9 requires Lot 1 to be held in perpetuity as a
3 constructive NGPA, the restriction cannot be so interpreted. First, no law supports the argument. Second,
4 Lot 1 is clearly not a "legal" NGPA; it did not comply with the NGPA requirements extant at the time of
5 Regatta Estates' establishment, Lot 1 is not marked with signs as an NGPA as required by county code, and
6 by its express terms may be developed with a house and driveway, both of which are incompatible with,
7 and disqualify the lot as, an NGPA. The Hearing Examiner's decision approving the preliminary subdivision
8 of Regatta Estates noted "The plat road in Parcel A has been design to allow its northwesterly extension
9 through proposed Lot 1" ¹³⁷ Dedication of a 60 foot wide right of way for a public road through Lot 1
10 was required. ¹³⁸ Use of the adverb "essentially" signals Lot 1 is not a legal NGPA; the use of the word would
11 have been unnecessary otherwise. Article VII of the Regatta Estates' CCRs contradicts any claimed
12 expectation that Lot 1 would be a constructive NGPA in perpetuity by explicitly stating the declarant's
13 intention to subdivide Lot 1 in the future. ¹³⁹ Restriction 9 cannot be reasonably read to impress Lot 1 with a
14 constructive NGPA status in perpetuity.

15 3. Violation of Other Restrictive Covenants

16 Alteration of a subdivision cannot be approved if doing so would violate a restrictive covenant. Preservation
17 Committee ¹⁴⁰ argues that approval of the plat alteration violates the requirement of plat restriction 9 to
18 maintain Lot 1 as "essentially an NGPA" lot and would violate other covenants, conditions, and restrictions
19 by creating conflicts with CCRs that establish an architectural control committee, maintain stormwater
20 management systems, create a homeowners association, and engage professional landscapers. ¹⁴¹
21 Logic does not compel the conclusion that the future Froggnal Estates CCRs will violate Regatta Estates CCRs,
22 or place a future homeowner on the horns of a dilemma between conflicting requirements of two sets of
23 CCRs. Logically, it is possible to craft CCRs for Froggnal that do not conflict with Regatta Estates CCRs. Legally,
24 the two do not inherently or necessarily conflict.

¹³⁷ Ex. O.33A (Finding of Fact 19).

¹³⁸ *Id.*, Condition G.vi.

¹³⁹ Ex. M.16.2, art. VII.

¹⁴⁰ The Regatta Estates Homeowners Association also objected to the plat alteration application with the same arguments as Picnic Point Preservation Committee. Froggnal objects to Regatta Estates opposition, pointing out that §7.1 of the Regatta Estates' CCRs covenants that the Regatta Estates homeowners cannot object or oppose subdivision and development of Lot 1. The Hearing Examiner's authority to reject Regatta Estates' opposition is not clear, but it is unnecessary to decide the question because Regatta Estates repeated the same objections as Preservation Committee.

¹⁴¹ CCRs to govern the maintenance of stormwater management systems, creation of HOA, and engagement of professional landscape management firm "do not conform to the current Regatta Estates CC&Rs, including the imposition of additional obligations and the omission of architectural review." Appellant's Hearing Memorandum, 18:7-14

1 a. Architectural Control Committee

2 Conflicting architectural control committees overseeing the homes in Lot 1 is not inherent. Each division of
3 Regatta Estates has a separate committee. Lot 1 is its own division and therefore ought to have its own
4 architectural control committee. The Regatta Estates HOA claims that the committee has not yet been
5 instituted, causing the duties to fall on the Regatta Estates HOA, which it assumes will conflict with the
6 architectural control committee to be created for Frognal Estates. This argument fails, however, for several
7 reasons.

8 First, the Regatta Estates HOA must create an architectural committee—the CCRs use the imperative verb
9 “shall”. The committee can only be composed of owners within Lot 1. Thus, the owner of Lot 1 (which is
10 Frognal) would be the committee. It is difficult to imagine how the future owners of Lot 1, who would
11 comprise Regatta Estates’ architectural control committee for Division 6, would contradict themselves
12 whilst wearing their Frognal Estates architectural committee hats.

13 Second, Regatta Estates cannot fail to perform its duty, then claim that its failure to perform its duty
14 creates an insurmountable conflict between its CCRs and future Frognal Estates CCRs. *See Kilcullen v.*
15 *Calbom & Schwab, P.S.C.*, 177 Wn. App. 195, 205, 312 P.3d 60, 65 (2013) (“It has the authority to excuse a
16 condition . . . if its occurrence has been prevented or hindered through a breach . . .”), citing Restatement
17 (Second) of Contracts §§ 205, 239; *Cavell v. Hughes*, 29 Wn. App. 536, 539, 629 P.2d 927 (1981);
18 *Refrigeration Engineering Co. v. McKay*, 4 Wn. App. 963, 969–70, 486 P.2d 304 (1971).

19 b. Stormwater Maintenance

20 The argument that a subsequent subdivision with an HOA and CCRs creates a conflict with an existing HOA
21 regarding stormwater facility maintenance was not explained, nor was any legal support provided. There is
22 no obvious or inherent conflict between stormwater facility maintenance, nor was any demonstrated by a
23 preponderance of the evidence.

24 c. HOA

25 No legal authority is cited for the proposition that a lot cannot belong to two HOAs and be subject to two
26 sets of CCRs. To the contrary, a subsequent subdivision cannot be approved if doing so would violate an
27 existing CCR of the earlier subdivision. There is no inherent violation of the existing CCR by creation of a
28 subsequent HOA and CCRs.

29 d. Professional Landscape Management

30 Similarly, the claim that a subsequent subdivision with an HOA and CCRs creates a conflict with an existing
31 HOA that hires professional landscape management is neither obvious nor supported. No explanation of
32 how such a conflict would arise was provided. The Regatta Estates CCRs do not mention engaging
33 professional landscape management. There is therefore no violation of existing CCRs with respect to
34 professional landscape management.

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1 e. Dilution of Interests

2 Finally, Preservation Committee and Regatta Estates argue that diluting Lot 1's ownership interest in the
3 common facilities and property of Regatta Estates violates the Regatta Estates CCRs. First, nothing in the
4 text of the Regatta Estates requires this result. Second, they argue that the small, fractional interest of Lot 1
5 owners in Regatta Estates common property will allow those owners to argue they should not be assessed
6 the cost of operating and maintaining Regatta Estates common property. The opponents do not explain
7 why such an argument would be successful, if made, nor is the success of such an argument obvious or the
8 inevitable conclusion. Lot 1 has an undivided ownership interest of arguably 1/78th of Regatta Estates
9 common property. Lot 1 and future lot owners within Lot 1 are arguably responsible for their pro rata share
10 of the cost of operating and maintaining common property. Opponents did not demonstrate that a conflict
11 must arise with Frogal Estates or that the lot owners of Division 6/Lot 1 would likely be relieved of any
12 responsibility for their share of Regatta Estates' costs of common property ownership.

13 C. CONCLUSIONS OF LAW

- 14 C.12 PDS Corrected Division of Dev. Decision 9/23/2015 requires subsequent recording of plat alteration
15 to remove restriction 9 and dilute the homeownership interest in the Regatta Estate open space
16 tracts.
- 17 C.13 A majority of homeowners affected by the proposed alteration of the plat must sign the alteration
18 application. Frogal is the sole owner of the affected lot. Its signature alone is therefore sufficient.
19 The plat may be altered without the approval of Regatta Estates homeowners.
- 20 C.14 Altering the plat as requested will not violate any covenant, condition, or restriction of Regatta
21 Estates.
- 22 C.15 Lot 1 is not a Native Growth Protection Area as defined by county code and does not enjoy the
23 protections of an NGPA.
- 24 C.16 Lot 1 was always intended to be subdivided and the Regatta Estates homeowners had notice of that
25 intention.
- 26 C.17 The Hearing Examiner has authority to approve plat alterations.¹⁴²
- 27 C.18 Frogal fulfilled the requirements for altering the Regatta Estates plat to remove restriction 9.

¹⁴² RCW 58.17.217 (1987) ("Any hearing required by RCW 58.17.212, 58.17.215, or 58.17.060 may be administered by a hearings examiner as provided in RCW 58.17.330.")

V. SUBDIVISION

A. Environmental

1. Critical Areas Regulations (Chapters 30.62, 30.62A, 30.62 B, and 32.62C SCC)

County staff verified Frogmal's assertion that there are no wetlands or streams on the site.¹⁴³ No protected wildlife species requiring protection exist on the site.¹⁴⁴ The off-site, downstream wetland does not affect the site. There are, however, erosion hazard areas and a landside hazard area. Approval will be conditioned on implementation of measures to protect against erosion hazards and the designation of undisturbed erosion hazard areas as Native Growth Protection Areas.

Although many public comments asserted that much of the site is a landslide hazard area, there is no evidence of historic landslides as demonstrated by LIDAR and expert testimony. As noted above, the geology of this site is different from the geology down valley which show evidence of landslide activity, and different still from the geology of the Oso area, site of the deadly landslide.

As defined by county code and determined by the evidence, the only landslide hazard area is a limited area of the north slope above the offsite wetland, where steep slopes descend approximately 80-90 feet before meeting an impermeable layer at the toe of the slope, where the infiltrated water seeps out and feeds the off-site wetland.

The homes for proposed lots 23 to 26 are at the top of the landslide hazard area. The minimum setback from a landslide hazard area is one third the height of the slope if the angle of the slope is between 33% and 100%, unless the applicant demonstrates by a geotechnical report that an alternative setback will provide equal or greater protection than the one third the height of the slope.¹⁴⁵ The slope behind these lots is approximately 50%.¹⁴⁶

Dr. Burgess' 2013 report¹⁴⁷ recommended a setback of fifty feet, unless further stability analysis demonstrates a setback of less than 50 feet would be adequate, all existing vegetation is retained in the buffer area, and all surface and roof water is tightlined to an approved discharge location at the base of the steep slope and is not allowed to flow over the slope face, near the slope crest, or within existing drainage ravines.¹⁴⁸

¹⁴³ Exhibits C.17, C.19, K.12, and K.13.

¹⁴⁴ Ex. K.13.

¹⁴⁵ Former SCC 30.62.210(2)(c).

¹⁴⁶ At lot 23, the descent is 72 feet over 145 feet. At lot 26, the slope descends 90 feet over 210 feet.

¹⁴⁷ Ex. C.18.

¹⁴⁸ Ex. C.18, p. 9.

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These conditions provide greater protection for the new homeowners and downslope owners than the 2005 code to which the project vests and will therefore be approved.

2. Drainage and Grading (Chapters 30.63A, 30.63B, and 30.63C SCC)

Drainage and grading were extensively discussed in the SEPA analysis above.¹⁴⁹ Approximately 39,000 net cubic yards of fill are expected. Approximately 3.44 acres of new impervious surfaces would be constructed.

The proposed project would conform to the current Snohomish County drainage manual issued in September 2010, which is based on Department of Ecology's 2005 Stormwater Management Manual for Western Washington. Frogmal vested to the 1992 drainage manual, but agreed to conform to the county's 2010 manual. The county's 2010 manual protects the environment better than the 1992 drainage manual.

Req't	Description	How Fulfilled?
1	Stormwater Site Plan	Frogmal prepared a targeted stormwater site plan and narrative ¹⁵⁰ that was revised once. ¹⁵¹ Although the revised targeted stormwater site plan demonstrates feasibility of complying with the 2010 county drainage manual, additional revisions are needed. Approval will be conditioned upon further revision and approval of the targeted drainage plan, which will become the basis for the more extensive, final drainage plan.
2	Stormwater Pollution Prevention Plan (SWPPP)	As discussed elsewhere, a level 3 SWPPP will be required, which requires more extensive involvement by both the county and the Department of Ecology. Frogmal agreed to comply with current chap. 30.63A SCC and the mitigation measures identified in the final EIS. A satisfactory preliminary SWPPP was provided. ¹⁵²
3	Water Pollution source control for new development or redevelopment	Satisfied because residential projects typically do not have to address water pollution source control after the project is completed.

¹⁴⁹ See pages 13 to 24

¹⁵⁰ Ex. C.4.

¹⁵¹ Ex. C.3.

¹⁵² *Id.*

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4	Preservation of natural drainage systems	Natural drainage systems preserved to the maximum extent feasible. As described elsewhere, stormwater discharges from the east and west ravines of the western threshold discharge area combine within a quarter mile. Even if they did not, they combine in such a way as to preserve natural drainage systems to the maximum extent feasible. Both discharges end up in the MS4 and then wetland. Adverse downstream impacts are not probable.
5	On-site stormwater management	On-site stormwater management has been adequately addressed for the purposes of preliminary plat approval by the targeted drainage report. Best Management Practices (BMPs) will be used.
6	Runoff treatment	Treatment will be provided by bioswales or infiltration.
7	Flow control requirements for new development or redevelopment	Flow control has been sufficiently addressed.
8	Detention or treatment in wetlands or wetland buffers	The project will not detain or treat stormwater in wetlands or buffers.
9	Inspection, operation, and maintenance requirements	An operation and maintenance manual will be provided with the full stormwater site plan narrative and construction plans. Maintenance covenants will be included on the final plat. Bonding and insurance will be required prior to construction permit issuance and will be addressed in the construction documents and procedures required to record final plat.

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B. Planned Residential Development (former Chap. 30.42B SCC)

1. Density (former SCC 30.23.020)

Frognal proposes a PRD of 112 dwelling units, which complies with former chapter 30.42B SCC requirements regarding the maximum number of dwelling units per acre. Frognal's calculations¹⁵³ are lacking some information required to complete calculations in former SCC 30.42.B.040(2)(b) and (c), but these calculations do not change the conclusion regarding total density because the final density required depends upon knowing the total amount of critical areas and buffers, not the internal allocation of critical areas and buffers between landslide hazard areas, erosion hazard areas, etc. While a reasonably accurate density calculation is necessary for preliminary plat approval, accurate allocations internal to the critical areas are necessary for final plat approval, not preliminary plat approval. Too, the proposed density is sufficiently below the maximum allowed density that minor variation in the size of the critical areas does not change the conclusion that the proposed preliminary plat complies with the density requirements. A pre-condition of approval will therefore be Frognal's allocation of total critical area between types of critical areas.

County code calculates maximum number of allowed dwellings by dividing the net development area (gross development area less critical areas and buffers) by the square footage of the zoning and granting a 20 percent bonus. The proposed project site has two different zoning areas, one R-8,400 and the other R-9,600.

The R-8,400 area may have a maximum of 46.38 dwellings¹⁵⁴ and the R-9,600 area may have a maximum number of dwellings of 81.05,¹⁵⁵ for a total maximum number of dwellings of 127.42. Frognal proposes 112 dwellings, well within the maximum allowed.

The proposal also complies with density requirements. The gross development area is 973,020 square feet (22.34 acres). The net development area of approximately 772,556 (17.74 acres) square feet is the result of subtracting approximately 200,352 square feet (estimated critical areas and buffers) from the gross development area. Division of the net development area by the number of dwellings yields a net density of 6.31 dwellings/acre, which is less than the maximum density of 9 dwelling units per acre allowed by ordinance.

2. General Design Criteria (former SCC 30.42B.100)

The proposal complies with all of the general design criteria. All requirements of the underlying zone have been applied to this project. This PRD is accompanied by an application for a preliminary subdivision and

¹⁵³ Ex. B.1.

¹⁵⁴ $324,632 \text{ sq. ft. (gross development area)} \div 8,400 \text{ sq. ft. (R-8,400 zoning)} = 38.65 \text{ dwellings} \times 1.2 \text{ (20\% PRD bonus)} = 46.38 \text{ dwellings.}$

¹⁵⁵ $648,388 \text{ sq. ft. (gross development area)} \div 9,600 \text{ sq. ft. (R-9,600 zoning)} = 67.54 \text{ dwellings} \times 1.2 \text{ (20\% PRD bonus)} = 81.05 \text{ dwellings.}$

the applicant has appropriately proposed the construction of single family detached dwellings in R-8,400 and R-9,600 zones.

3. Open Space (former SCC 30.42B.115)

The proposed development complies with the open space requirements of former SCC 30.42B.115. A minimum of twenty percent of the gross site area, or 194,604 square feet, must be left as open space and Frognal intends to leave 348,542 square feet open. The open space would be permanently established in clearly designated separate tracts owned in common by all the lot owners.¹⁵⁶ Approval will be conditioned on recording covenants, conditions, and restrictions to provide for maintenance of the total open space in a manner which will assure its continued use as open space.

Usable open space for active or passive recreation must be at least 67,200 square feet.¹⁵⁷ Frognal designated 137,041 square feet as usable open space. Frognal, exceeds the requirement of at least forty percent (26,880 sq. ft.) of usable open space in a single tract by placing 41,205 square feet in tract 995. Thirty percent (20,160 square feet) of the required on-site recreation space must be developed for active recreation. Frognal proposes 41,205 square feet of active recreation area within tract 995, which will include trails and a gazebo.

Although Frognal presented adequate information for review of the proposed preliminary plat, approval will be conditioned upon it providing adequate information to ascertain that active recreation portions of tract 995 are on a reasonably level site with slopes no greater than six percent, unless Frognal demonstrates that the proposed recreation facilities function adequately on greater slopes.

4. Landscaping

The proposed project complies with the landscaping requirements of former chapter 30.42B SCC.

5. Tree Retention (former SCC 30.42B.130)

Frognal proposes to retain trees in open space areas, except where active recreation is proposed. Completion of a survey of significant trees outside of critical areas and buffers will be a pre-condition for approval. Clearing of the site will not be permitted until a significant tree retention plan is approved by PDS. Approval will be conditioned upon submission of an acceptable tree retention plan.

6. Roads, Access, and Circulation

The PRD has been designed to provide adequate road access, connection and circulation to minimize traffic congestion, provide connection to adjoining neighborhoods where feasible, ensure adequate utility services, and provide emergency vehicle access. The configuration and design of the roads and access facilities in this development are in accordance with chapters 30.24 SCC, 30.66B SCC, and 30.53A SCC, and

¹⁵⁶ SCC 30.42B.115(1)(e)(iii) (2013).

¹⁵⁷ Six hundred square feet per dwelling unit (600 x 112 = 67,200).

the Engineering Design and Development Standards (EDDS) that were in effect at the time of application. Access to dwelling units with the PRD will be by public or private. The county engineer has determined the project will provide adequate connection to county roads. The PRD has been designed to provide adequate and safe pedestrian access to and circulation within the development by sidewalks. Approval will be conditioned on offsite improvements for safe pedestrian facilities for school children.¹⁵⁸

7. Bulk Regulations (SCC 30.42B.145)

The proposed site plan generally complies with the dimensional standards for single family residential development, including lot width, lot area, setbacks, and lot coverage. Several proposed dwellings shown on the preliminary plat do not meet required setback of five feet from the property line; a pre-condition will be imposed to require revision of the PRD official site plan to comply with setback requirements. Other minor changes may be required as the preliminary plat is finalized.

C. Transportation (Title 13 SCC, EDDS 3-02, and SCC 30.66B.420)

1. Area Transportation

a. Concurrency Determination (SCC 30.66B.120)

County ordinances prescribe the measures and tests which a development must meet in order to proceed, and this project meets those measures and tests. The project must be approved if it does not affect a county arterial unit in arrears or cause a county arterial to go into arrears.¹⁵⁹ Transportation Service Area (TSA) D had no arterial units in arrears as of the date of submittal. The proposed development is expected to generate fifty or more peak hour trips.¹⁶⁰ Therefore, the project was analyzed to determine whether forecasted levels of service will cause any arterial unit to go into arrears, which would prohibit a finding of concurrency. Forecasts of levels of service that included this proposed project and other proposed projects in the pipeline did not identify any arterial unit that would go into arrears. The project therefore is concurrent as of May 15, 2015.¹⁶¹

b. Inadequate Road Conditions (IRC) (SCC 30.66B.210)

Irrespective of the existing level of service, a development which adds at least three evening peak hour trips to a place in the road system that has an Inadequate Road Condition (IRC) must eliminate the IRC in order to be approved. The development will not affect any IRCs in TSA D with three or more evening peak hour trips, nor will it create an IRC. Therefore, it is expected that mitigation will not be required with

¹⁵⁸ See discussion below at page 74.

¹⁵⁹ SCC 30.66B.120(1) (2003). The proposed development is deemed concurrent as of March 18, 2015. The concurrency determination expires on March 18, 2021.

¹⁶⁰ 112 lots x 1.01 PM PHT/lot x .95 (TDM credit) = 107 PM peak hour trips. 112 lots x .75 AM PHT/lot x .095 (TDM credit) = 80 AM peak hour trips.

¹⁶¹ Ex. C.2. The concurrency determination expires on May 15, 2021.

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respect to IRC and no restrictions to building permit issuance or certificate of occupancy/final inspection will be imposed under this section of chapter 30.66B SCC.

c. Impact Fees

i. County

The proposed development must mitigate its impact upon the future capacity of the Snohomish County road system by paying a road system impact fee. The road system impact fee will be the product of the average daily trips (ADT)¹⁶² resulting from multiplication of average daily trips (ADT) generated by the development by the per trip amount for TSA D.

Road System Impact Fee Calculation

1. Average Daily Trips (112 SFRs ¹⁶³ x 9.57 ADT/SFR)	1,071.84
2. Credit for TDM (5% of line 1)	-53.592
3. Net ADT	1,018.248
4. TSA D amount per ADT:	\$226
5. Road system impact fee for this development (Line 3 x Line 4):	\$230,124.05
Impact Fee per unit: (Line 5 divided by 112 dwellings)	\$2,054.68

ii. Other Jurisdictions

a. State Highway Impacts (former SCC 30.66B.710)

When a development's road system affects identified projects for a state highway, mitigation requirements will be established using the County's SEPA authority consistent with the terms of the interlocal agreement between the County and the Washington State Department of Transportation (WSDOT). This is consistent with the County's SEPA policy¹⁶⁴ through which the county designates and adopts by reference the formally designated SEPA policies of other affected agencies for the exercise of the County's SEPA authority. The proposed development will not affect any pending WSDOT project. No impact fee will therefore be required.¹⁶⁵

¹⁶² ADT is calculated using the 9th edition of the Institute of Traffic Engineers' Trip Generation Report.

¹⁶³ Single Family Residence (SFR).

¹⁶⁴ SCC 30.61.230(9) (2012).

¹⁶⁵ Mr. Mark Brown. Ex. O.32.

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1 *b. Cities (former SCC 30.66B.720)*

2 Traffic mitigation fees to cities will not be required because the traffic study does not demonstrate traffic
3 impacts at a level that would trigger mitigation according to any interlocal agreement with a city.

4 iii. Transportation Demand Management (SCC 30.66B.630)

5 Transportation demand management (TDM) is a strategy for reducing vehicular travel demand, especially
6 by single occupant vehicles during commuter peak hours. TDM offers a means of increasing the ability of
7 transportation facilities and services to accommodate greater travel demand without making expensive
8 capital improvements. New developments like this within an urban growth area must comply with county
9 code's TDM requirements. Frogmal must either incorporate features into its design that have the potential
10 for removing five percent of the development's evening peak hour trips from the road system or pay a
11 fee.¹⁶⁶ Frogmal's design¹⁶⁷ satisfies this requirement; it will therefore receive a 5% credit toward the ADT
12 calculated to be generated from this project. Approval will be conditioned, on the construction of on-site
13 TDM features prior to final inspection or issuance of a certificate of occupancy.

14 2. Project Site

15 a. Right of Way

16 60th Ave. W. is not an arterial and requires 30 feet of right of way on each side of the center line. Twenty
17 feet and 15 feet currently exist on the project side of the center line. Approval will be conditioned on
18 dedication of 25 feet of right of way along 60th Ave. W. and 58th Pl. W., which is adequately shown on the
19 preliminary plat. Frogmal proposes 46 feet along 60th Ave., W. and 35 feet of right of way along remaining
20 internal public roads, both which are acceptable to Public Works. Approval will also be on dedicating six
21 feet along the right of way of 60th Ave. W. in front of lots 86 to 89 and an increased, irregular amount to the
22 north line of Lot 91.

23 Three unopened rights of way must be vacated before the final plat can be approved and recorded. The
24 Hearing Examiner does not have jurisdiction over vacation of unopened rights of way. Approval will be
25 conditioned on Frogmal successfully obtaining vacation of those rights of way on 58th Pl. W., 60th Ave. W.,
26 and 136th St. SW.

27 b. Road System, Access, and Circulation

28 Frogmal will access the public road system from 58th Pl. W. and 60th Pl. W. Frogmal proposes a private road
29 to connect to 60th Ave. W; Public Works agrees with this proposal. An existing house on the northwest
30 corner of 60th W. and 136 Pl. SW immediately outside the proposed development is closer to the right of
31 way than currently allowed by county code. Frogmal therefore proposes to move the extension of 60th Ave.

¹⁶⁶ SCC 30.66B.625(1) (2010).

¹⁶⁷ Ex. B.2.

W. east, away from the house. The distance of the road right of way will be 12 feet and the distance of the new proposed road will be 17 feet from the existing house.

60th Ave. W. does not comply with EDDS standards for vertical curves, slope, and design speed. The County Engineer approved several deviations. The Engineer approved a deviation for slope and stopping and intersection sight distances along 60th Ave. W.¹⁶⁸ Another deviation approved a modified design for sidewalks and planters in the development, conditioned on the walkways not having stairs and mailboxes would be at locations served by the pedestrian trail system, back yards adjacent to the trail system may not be fenced unless a gate to the trail system is installed, and any part of the trail system serving the public road must be included in a public easement. Another deviation approved a slope of 15 percent at two locations along 60th Ave. W. Finally, the Engineer approved a deviation for 20 mph design speed, conditioned upon the installation of street lighting at the sag curves on 60th Ave. W. to provide adequate sight and stopping distances for night driving.

c. Frontage Improvements (SCC 30.66B.410)

Full urban frontage improvements are required where the project 60th Ave. W.¹⁶⁹

1. Cement concrete vertical curb and gutter.
2. Planter strip with a width of five feet.
3. Sidewalk with a width of five feet.

Approval will be conditioned upon the completion of construction of frontage improvements prior to recording the subdivision.

d. Bicycle

Bicycle facilities will not be required because the project does not front on any part of the bicycle system described by the county's Bicycle Facility System Map.

D. Mitigation

1. Park and Recreation Impact Mitigation (Chapter 30.66A SCC)

Prior to building permit issuance for each unit, Frogmal must pay One Thousand Two Hundred Forty-four and forty-nine hundredths dollars (\$1,244.49) for each new single family residential unit as acceptable mitigation for park and recreation impacts.¹⁷⁰

¹⁶⁸ Ex. G.4.

¹⁶⁹ Snohomish County Department of Public Works Rule 4222.020(1).

¹⁷⁰ SCC 30.66A.020 (2010). The project site lies in the Nakeeta Beach park service area. SCC 30.66A.040(1) (2005).

2. School Impact Mitigation (Chapter 30.66C SCC)

Approval of the development will be conditioned upon the payment of school impact fees.¹⁷¹ The amount will be determined according to the Base Fee Schedule in effect for the Mukilteo School District at the time of building permit application and collected at the time of building permit issuance for the proposed new units. Credit shall be given for Lots 1-3.

E. Public Safety and Health

1. Fire

The Fire Marshal's Office reviewed the proposed development. Satisfaction of the pre-condition to correct the few lots with inadequate setbacks will satisfy the fire code requirement of 10 feet of separation between dwellings.

Approval will be conditioned on satisfactory determination of fire hydrant locations and details and location of "no parking fire lane" signs or pavement striping during construction plan review. Approval will also be conditioned on installation and operability of fire hydrants prior to the storage or construction of combustible materials and on adequately sized and contrasting building address displays prior to occupancy.

2. Pedestrian Facilities and Schoolchildren (RCW 58.17.110 and 58.17.060)

Elementary students will walk to Picnic Point Elementary School. Middle school and high school students will take a school bus to their schools.¹⁷²

Mukilteo School District asked for offsite improvements for elementary school students along the east side of 60th Ave. W. to the south for approximately 1,000 feet to connect with improvements at 140th St. SW. These improvements, however, would result in three portables being located too close to the right of way and would require the School District to relocate the portables. The School District updated its request, asking for improvements from 136th St. SW to the rear entrance of the elementary school on 60th Pl. W and for traffic calming devices along 60th Pl. W.¹⁷³

Many community members expressed concern about school children's safety in written and verbal public comments.

Public Works recommends conditioning approval on the installation of three offsite improvements. Offsite improvements must be proportional and have an adequate nexus to conditions caused by the development. The Examiner observed pedestrian and vehicular traffic on opening and closing of the

¹⁷¹ SCC 30.66C.100 (2013).

¹⁷² Ex. H.3.

¹⁷³ Ex. H.7. The School District requested curb, gutter, and raised sidewalk. Public Works determined, however, that a seven foot paved walkway along the east side will be adequate.

1 elementary on four occasions and finds and concludes that the proposed improvements are proportional,
2 have sufficient nexus to justify their imposition, and are not unconstitutional exactions.

3 Approval will be conditioned upon the construction or installation of: (1) completion of full improvements
4 for approximately 100 feet on the west side of 60th Ave. W. between 136th Pl. SW and the project;¹⁷⁴ (2)
5 seven foot paved walkway along the east side of 60th Ave. W. for approximately 333 feet from the project
6 site to the rear entrance of the elementary school; and (3) the existing student crossing on 60th Ave. W.
7 shall be improved to a raised, painted crossing with electronic signs.

8 3. Utilities

9 Adequate provisions have been made for utilities. Water and sanitary sewer service will be supplied by
10 Alderwood Water and Wastewater District.¹⁷⁵ Snohomish County PUD No. 1 will supply electricity.¹⁷⁶

11 F. Subdivisions (former Chapter 30.41A SCC)

12 Having considered all relevant facts, including the physical characteristics of the site, sidewalks and other
13 planning features regarding walking conditions for students who walk to and from school and with
14 fulfillment of the conditions imposed below, the Hearing Examiner finds the proposed subdivision will serve
15 the public interest and it makes appropriate provision for the public health, safety, and general welfare, for
16 open spaces, drainage ways, streets, alleys, other public ways, transit stops, potable water supplies,
17 sanitary wastes, parks and recreation, playgrounds, sites for schools and school grounds, fire protection
18 and other public facilities.¹⁷⁷ As conditioned, the proposed subdivision meets the general requirements of
19 SCC 30.41A.100 (2006) with respect to health, safety and general welfare of the community. The proposed
20 lots will not be subject to flood, inundation or swamp conditions. The proposed subdivision conforms to
21 applicable zoning codes and the comprehensive plan. Provisions for adequate drainage have been made.
22 Local utilities confirmed the availability of water, sewer, and electrical service to the project.

23 VI. DECISION

24 Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Examiner hereby issues the
25 following final decision:

- 26 1. Any finding of fact in this decision which should be deemed a conclusion of law is hereby adopted
27 as a conclusion of law.

¹⁷⁴ Although not requested by the School District, completion of the sidewalk network on the west side of the street is reasonable and necessary to provide a safe walking route for school children.

¹⁷⁵ Exhibits H.1 and H.2.

¹⁷⁶ Ex. H.10.

¹⁷⁷ SCC 30.41A.100 (2006).

2. Any conclusion of law in this decision which should be deemed a finding of fact is hereby adopted as a finding of fact.
3. The SEPA environmental impact statement is affirmed;
4. The requested alteration of the Regatta Estates plat with respect to Lot 1 is approved subject to the conditions described below; and
5. Upon fulfillment of the pre-conditions, the preliminary subdivision is approved subject to the conditions described below.

A. SEPA

Having considered the entire record and according substantial weight to the determination of the responsible SEPA Official: (1) the Examiner does not have a firm and definite conviction that PDS made a mistake in limiting the scope of the of the environmental impact statement to the earth and water elements; (2) PDS did not lack reasonably sufficient information; and (3) PDS did not fail to consider probable significant adverse environmental consequences. PDS considered the environmental consequences identified by the appellants, conducted a reasonable investigation, and recommended conditions to reduce potentially significant adverse environmental consequences either to the point where they are not likely to occur or are not significant. The Environmental Impact Statement is a reasonably thorough discussion of probable significant adverse environmental consequences of the proposal. The appeal of the Preservation Committee is denied and the limited scope Environmental Impact Statement affirmed.

B. PLAT ALTERATION

Per the Corrected Division of Development Decision dated September 23, 2015 (Exhibit K.4), Frogna's request for alteration of the Regatta Estates final plat is approved. Frogna shall record a plat alteration for Regatta Estates that accomplishes the following:

1. Removal of Restriction No. 9, which required Lot 1 to be treated "essentially" as a Native Growth Protection Area; and
2. Any ownership interest the owner (or owners) of Lot 1 of Regatta Estates has (have) in Tracts 986 through 990 and 992 through 997 of Regatta Estates shall be diluted *pro rata* based on the number of new lots created on Lot 1 of Regatta Estates.

C. PRELIMINARY PLAT AND PRD OFFICIAL SITE PLAN

Pre-conditions

1. All pre-conditions must be fulfilled, if at all, by May 25, 2018.

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Submittal of Revised Preliminary Plat and Targeted Drainage Plan to Correct Errors and Omissions¹⁷⁸

2. Frogmal shall submit a revised Preliminary Plat, PRD Official Site Plan and Targeted Drainage Plan (Exhibit B.1) for PDS to review and confirm that the revised submission meets all pre-conditions. The plan shall be prepared in general conformance with Exhibit B-1. Any discrepancy between the content of the landscaping plan and the performance standards of Title 30 SCC shall be resolved in favor of Title 30. Revised plans shall include the following:
 - A. On Sheet P1, items under the headings Project Information and Legal Description shall be revised, corrected, or updated as follows:
 - i. A boundary line adjustment that has been completed;
 - ii The comprehensive plan designations in effect at the time of complete application;
 - iii Removal of Regatta Estates Lot 74 from the proposed action; and
 - iv. Other project information that may need recalculation after addressing subsequent conditions or comments on the PRD Official Site Plan (Exhibit B.1).
 - B. Update open space tracts to show Native Growth Protection Areas, consistent with former SCC 30.62.075 and mitigation measures identified in the FEIS (Exhibit E.5, page 1-19). NGPA areas shall include landslide hazard areas and undisturbed erosion hazard areas. NGPAs may include other areas where native vegetation is to be preserved. NGPAs may be in open space/NGPA tracts, separate NGPA tracts, or as NGPA easements on the open space tracts.
 - C. Calculate unit yield and bonus in a manner consistent with former SCC 30.42B.040.
 - D. Calculate Minimum Net Density in a manner consistent with former SCC 30.23.020.
 - E. Include a new sheet showing all building setback and proposed building footprints, to demonstrate that the proposal meets the applicable county code and to address issues found in review of former SCC 30.42B.145(2), former SCC 30.62.055(1)(a)(vi), former SCC 30.62.210, and building separation requirements of the fire code (Chapter 30.53A SCC).
 - F. Provide information sufficient to evaluate slopes on the active recreation facility (Tract 995) relative to former SCC 30.42B.115(3)(d).

¹⁷⁸ Headings within Pre-conditions and Conditions are for convenience. Compliance with individual pre-conditions and conditions should occur in the context of project sequence. Headings should not be interpreted or applied to disrupt the logical progression of compliance and project development.

Submittal of Revised of Landscaping Plan to Correct Errors and Omissions

3. FrognaI shall submit a revised Landscaping Plan (Exhibit B.3) for PDS to review and confirm that the revised submission meets all pre-conditions. The plan shall generally conform to Exhibit B.3 and shall comply with all required landscape standards. This updated landscape plan shall be submitted concurrently with an updated Preliminary Plat and PRD Official Site Plan (Exhibit B.1). Landscaping plans shall be revised as follows:
 - A. Update the lot configuration and building footprint information consistent with Pre-condition 2(E).
 - B. Add calculations that demonstrate consistency with former SCC 30.25.015 which requires landscaping on at least 10% of the site.
 - C. Update the Landscaping Plan (Exhibit B.3) to include a survey of significant trees outside designated critical areas that the plan proposed to retain. The survey does not need to include trees inside NGPAs. The survey shall include tree location and size per former SCC 30.42B.130(2).
 - D. Landscape Planting Schedule shall reflect that new "new evergreen and deciduous trees shall be at least eight feet high at time of planting" consistent with former SCC 30.25.015(5)(a).
 - E. The plans shall demonstrate compliance with Snohomish County tree retention requirements under former SCC 30.42B.130, or provide at least 477 new evergreen conifer and 727 new deciduous trees (1,204 trees total) in the developed portion of the subject property as indicated on the Landscape Plans (Exhibit B.3). This is consistent with mitigation measures to address stormwater runoff and lack of infiltration described in the FEIS (Exhibit E-5, page 1-26).

Conditions

Site Development

1. All site development work shall comply with the requirements of the plans and permits approved pursuant to Pre-conditions B and C.
2. Before any site works begins:
 - A. FrognaI shall obtain a Land Disturbing Activity (LDA) permit from PDS. This permit shall include the site excavation plan, Temporary Erosion and Sediment Control (TESC) plan (also known as a Stormwater Pollution Prevention Plan (SWPPP)), landscaping plans for construction, and drainage plans and reports necessary for compliance with Chapters 30.63A (Drainage) and 30.63B (Land Disturbing Activity) SCC. The site excavation plan shall, to the extent practicable, balance on-site cut and fill volumes by redistributing cut material for use as fill. LDA permit will impose conditions to minimize or avoid potential adverse impacts associated with earthwork grading operations. (Corrected Division of Development Decision dated September 23, 2015 (Exhibit K.4) and FEIS (Exhibit E.5) mitigation measure (MM), page 1-19)

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- 1 B. Additional geotechnical engineering analysis shall be performed prior to issuance of the Land
2 Disturbing Activity permit. This analysis will take into account the effects of seismic loading on
3 foundations, slopes, and retaining structures. (FEIS (Exhibit E.5) mitigation measure, page 1-22)
- 4 C. A site maintenance plan will be in place in the event that stormwater turbidity measures exceed
5 Department of Ecology standards, and to comply with Snohomish County Pollution Control (SCC 7.53
6 and FEIS (Exhibit E.5) mitigation measure, page 1-23)
- 7 D. Global stability analyses shall be submitted to PDS which to demonstrate that retaining systems and
8 fill prisms are stable. (FEIS (Exhibit E.5) mitigation measure, page 1-19)
- 9 E. Retaining wall plans will be submitted. (FEIS (Exhibit E.5) mitigation measure, pages 1-19 to 1-20)
- 10 F. FrognaI shall apply for, execute, and comply with a Haul Route Agreement in accordance with EDDS
11 9-01(B). The Haul Route Agreement shall require construction related traffic, including, but not
12 limited to, deliveries of material and equipment, to access the site from Picnic Point Road to the
13 greatest extent possible, instead of using 60th Ave. W., and avoid traveling by Picnic Point Elementary
14 School. With exceptions as approved by the County Engineer and consistent with the need for
15 emergency vehicle access, the County Engineer should consider requiring fencing and a locked gate
16 at entrance to the site from to prevent delivery trucks from accidentally using 60th Ave. W. or
17 violating the haul route agreement. The Haul Route Agreement shall provide that: (1) FrognaI will
18 advise all first tier contractors and consultants of the Haul Route Agreement requirements and
19 include compliance with the Haul Route Agreement in its contract with them; (2) all contractors,
20 consultants, and materialmen will include flow down clauses to comply with the Haul Route
21 Agreement in contracts with lower tier contractors, consultants, and materialmen.
- 22 G. All proposed retaining wall systems shall be properly designed and analyzed by the project
23 Geotechnical Engineer to confirm that adjacent slopes and off-site properties would not be affected
24 by development. (FEIS (Exhibit E.5) mitigation measure, page 1-20)
- 25 H. The plans shall demonstrate that all slopes that will not be retained shall be constructed as
26 engineered cut or fill slopes that do not exceed 2' horizontal to 1' vertical. (FEIS (Exhibit E.5)
27 mitigation measure, page 1-19)
- 28 I. No clearing shall be allowed until a significant tree retention plan is approved (former SCC
29 30.42B.130(8) Design criteria - tree retention).
- 30 J. A certified arborist shall evaluate individual significant trees and stands of trees adjacent to existing
31 or proposed homes to determine whether such trees represent a hazard. Hazardous trees may
32 include those subject to windthrow, especially in narrow open space tracts such as along the west
33 and south edges of the site (FEIS (Exhibit E.5), page 1-27). Landscaping construction plans may only
34 show removal of hazardous, dead, or diseased trees plan if the plans include a letter from a certified
35 arborist stating the reasons for removal (former SCC 30.25.016).

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- 1 3. To control potential sediment transport and erosion during the wet season, seasonal work limitations
2 shall apply. From October 1 through April 30, land disturbing activities may only be authorized if silt-
3 laden runoff will be prevented from leaving the site. (SCC 30.63A.450 Minimum Requirement 2, and
4 (FEIS (Exhibit E.5) mitigation measure, page 1-22)¹⁷⁹
- 5 4. Slopes shall be protected by erosion control measures until vegetation growth has been re-established.
6 (FEIS (Exhibit E.5) mitigation measure, page 1-19)
- 7 5. Topsoil on the proposal site shall be removed and stockpiled on-site for redistribution following site
8 grading. (FEIS (Exhibit E.5) mitigation measure, page 1-20). Stockpiles shall be protected from erosion as
9 provided in condition 7 below.
- 10 6. The Land Disturbing Activity Permit shall limit work hours to 7 am until 5 pm to minimize noise impacts
11 in the surrounding area during the grading phase of work. (FEIS (Exhibit E.5) mitigation measure, page
12 1-20)
- 13 7. Soils that are to be reused around the site shall be stored in such a manner as to reduce erosion from
14 the stockpile. Protective measures may include, but are not limited to, covering with plastic sheeting,
15 the use of low stockpiles in flat areas, or the use of straw bales or silt fences around pile perimeters.
16 These measures shall be required during the period between October 1 and April 30. (FEIS (Exhibit E.5)
17 mitigation measure, page 1-24)¹⁸⁰
- 18 8. If the significant tree retention plan certified by an arborist shows the removal of any significant trees,
19 replacement of those removed significant trees and accompanying adjustments to the construction
20 landscaping plans shall comply with the tree replacement requirements in former SCC 30.25.016.
- 21 9. To protect the retained trees onsite, construction plans shall include the tree protection fencing
22 requirements of SCC 30.25.016(7).
- 23 10. Detailed drainage modeling will be provided during final design to analyze surface and below-ground
24 drainage, retaining wall drainage, and the function of the proposed stormwater management and
25 water quality treatment system prior to the issuance of County permits for site clearing and grading.
26 (FEIS (Exhibit E.5) mitigation measure, pages 1-26 to 1-27)
- 27 11. The County Land Disturbing Activity Permit will require preparation and implementation of a Spill
28 Prevention Control and Cleanup Plan (SPCCP) to be implemented by the construction contractor. (FEIS
29 (Exhibit E.5) mitigation measure, page 1-28)
- 30 12. A forest practices permit shall be obtained for logging on the site per Chapter 30.43F SCC.

¹⁷⁹ The relevant mitigation measure in the FEIS identifies slightly different dates, but where a difference exists, the provisions of Snohomish County Code shall apply.

¹⁸⁰ The FEIS give the date range as October 1 to March 31. However, SCC 30.63.A.450 says October 1 to April 30. Where the FEIS and Snohomish County Code differ, the more stringent mitigation shall apply.

- 1 13. Frogna! shall mark with temporary markers in the field the boundary of all Native Growth Protection
2 Areas (NGPA) required by former Chapter 30.62 SCC, or the limits of the proposed site disturbance
3 outside of the NGPA, using methods and materials acceptable to the county.
- 4 14. Frogna!'s construction contractor shall obtain and comply with the conditions of a National Pollutant
5 Discharge Elimination System (NPDES) Construction Stormwater Permit from the Washington
6 Department of Ecology.
- 7 15. The area corresponding to the drip line of a retained significant tree or the outermost drip lines of a
8 cluster/stand shall be properly identified and projected with clearly visible temporary fencing. No
9 impervious surfaces, fill, or excavation or storage of construction materials shall be permitted within
10 the temporary fencing area. (former SCC 30.42B.130(8) and FEIS (Exhibit E.5) mitigation measure, page
11 1-27)
- 12 16. A licensed geotechnical engineer shall be onsite (or on-call 24 hours/day) during grading and site
13 construction activities. (FEIS (Exhibit E.5) mitigation measure, page 1-20)
- 14 17. The Geotechnical Engineer shall be required to be on-site to monitor the placement of fill in ravines and
15 placement of any temporary ponds or drainage swales built within fill. (FEIS (Exhibit E.5) mitigation
16 measure, page 1-25)
- 17 18. A Certified Erosion & Sedimentation Control Lead (CESCL) shall be on-site (or on-call 24 hours/day)
18 during grading and site construction activities. (FEIS (Exhibit E.5) mitigation measure, page 1-25)
- 19 19. All TESC measures for a given area to be graded or otherwise worked shall be installed prior to any
20 activity in that area. The sequence of construction in a given area shall be to install sediment traps or
21 ponds and establish perimeter flow control prior to the start of mass grading. (FEIS (Exhibit E.5)
22 mitigation measure, page 1-23)
- 23 20. In accordance with the NPDES permit, the contractor shall maintain the site logbook, record
24 implementation of the SWPPP and other permit requirements, record installation and maintenance of
25 BMPs, record site inspections to be conducted by the (CESCL), and comply with and record the results
26 of stormwater quality monitoring. (FEIS (Exhibit E.5) mitigation measure, page 1-25)
- 27 21. The Stormwater Pollution Prevention Plan (SWPPP) in accordance with Snohomish County Rule 3044
28 shall be implemented. (FEIS (Exhibit E.5) mitigation measure, page 1-25)
- 29 22. On-site erosion control inspections and turbidity monitoring shall be performed in accordance with
30 Ecology requirements. Monthly reporting to Ecology shall be performed on a regularly-scheduled basis.
31 TESC monitoring shall be part of weekly construction team meetings. (FEIS (Exhibit E.5) mitigation
32 measure, page 1-24)
- 33 23. Temporary and permanent erosion control and drainage measures shall be adjusted and maintained, as
34 necessary, at the time of construction. (FEIS (Exhibit E.5) mitigation measure, page 1-24)

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- 1 24. Construction contractor(s) shall be responsible for routine inspection and proper maintenance of
2 stormwater management facilities and Best Management Practices (BMPs) during site development.
3 (FEIS (Exhibit E.5) mitigation measure, pages 1-24 to 1-25)
- 4 25. Check dams proposed in the West Basin stormwater management system shall be installed by hand or
5 with minimally invasive equipment to protect existing vegetation. (FEIS (Exhibit E.5) mitigation
6 measure, page 1-26)
- 7 26. Placement of the proposed drainage blanket and pipe to carry upstream flow through the west ravine
8 fill shall be undertaken when there is no flow in the ravine. (FEIS (Exhibit E.5) mitigation measure, page
9 1-28)
- 10 27. During the wetter months when seasonal work limitation per SCC 30.63A.450(4) apply, or when large
11 storm events are predicted during summer months, each work area shall be stabilized so that if
12 showers occur, the work area can receive rainfall without excessive erosion or sediment transport.
13 When season work limitations apply, areas that are to be left unworked for more than two days shall be
14 mulched or covered with plastic. During the summer months, stabilization can be accomplished by
15 proof rolling the subgrade. The stabilization process will also include establishing temporary
16 stormwater conveyance channels through work areas to route runoff to approved treatment facilities.
17 (Exhibit K.20, SCC 30.63A.450, and FEIS (Exhibit E.5) mitigation measure, page 1-23)
- 18 28. Polyacrylamide may be applied to bare soil to reduce erosion and control sediment. If necessary,
19 approved additives may also be used to enhance settlement of suspended sediments in temporary
20 erosion/sedimentation control ponds during construction. All chemical treatment shall be as approved
21 by the Department of Ecology (FEIS (Exhibit E.5) mitigation measure, pages 1-23 to 1-24)
- 22 29. All disturbed areas shall be revegetated as soon as practicable. If site work is performed outside of the
23 growing season, disturbed areas shall be covered with mulch, as recommended in the Erosion Control
24 Plan. Straw mulch provides the most cost-effective cover measure and can be made wind-resistant with
25 the application of a tackifier after it is placed. (FEIS (Exhibit E.5) mitigation measure, page 1-24)
- 26 30. Surface runoff and discharge shall be controlled during and following site development. Under no
27 circumstances shall concentrated discharges be allowed to flow over slopes greater than 33%. (FEIS
28 (Exhibit E.5) mitigation measure, page 1-24)
- 29 31. Fill shall be placed as compacted structural fill under the direction of the project Geotechnical Engineer
30 to provide the necessary strength properties for foundations and slope stability. (FEIS (Exhibit E.5)
31 mitigation measure, page 1-20)
- 32 32. Construction activities shall comply with Washington Department of Ecology fugitive dust and odor
33 emissions regulations cited in WAC 173-400-040.
- 34 33. Excavations for the installation of utilities during construction shall be stabilized by temporary
35 measures such as trench boxes or sheet piles, or by laying back cut slopes in accordance with good

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practice as required by the Occupational Safety and Health Administration (OSHA). (FEIS (Exhibit E.5) mitigation measure, pages 1-20 to 1-21)

34. Reusable soil materials (e.g. topsoil) shall be stockpiled onsite for redistribution following site grading. (FEIS (Exhibit E.5) mitigation measure, page 1-20)

Before Issuance of Building Permits

35. To assure completion of work and maintenance in compliance with provisions in Title 30, FrognaI shall submit bond(s) or other performance securities for acceptance by PDS. See former SCC 30.25.043 (landscaping installation), former SCC 30.62.070 (critical areas protection); and Former SCC 30.63A.170, former SCC 30.63A.400, former SCC 30.63A.410(1), and former SCC 30.63B.240 (drainage and grading). With respect to drainage and grading bonds, the versions of code to which FrognaI Estates is vested require 150% bonds.

36. If during final engineering design and construction plan review the Geotechnical Analysis determines that the risk of erosion cannot be adequately managed in the proposed West Basin stormwater management system, any discharge from a detention facility in this system would be piped directly to the Picnic Point Road stormwater conveyance system. (FEIS (Exhibit E.5) mitigation measure, pages 1-25 to 1-26). Open conveyance of stormwater discharge is prohibited.

37. Compliance with the Ecology 2005 SWMMWW will require the site stormwater discharge to Picnic Point Creek to match developed discharge durations to pre-developed durations for the range of pre-developed discharge rates from 50 percent of the 2-year peak flow up to the full 50- year peak flow. (FEIS (Exhibit E.5) mitigation measure, page 1-28)

38. Additional analysis of the northeast drainage basin shall be performed during final design to evaluate the conveyance(s) from site discharge(s) to the Picnic Point Creek. (SCC 30.63A.200(2)(b) and FEIS (Exhibit E.5) mitigation measure, page 1-29). FrognaI must demonstrate it has the legal right to convey or discharge stormwater across or to any property not owned by FrognaI.

39. Where necessary to improve infiltration characteristics, native and fill soils may be amended with organic material to improve infiltration rates, or to improve drainage provided through lower-permeability soils to the underlying advance outwash. (FEIS (Exhibit E.5) mitigation measure, pages 1-21 to 1-22)

40. Additional permits, as necessary, shall be obtained for off-site construction material sources. (FEIS (Exhibit E.5) mitigation measure, page 1-20)

41. All water, sewer, electrical and communication distribution and service lines shall be underground.

42. All proposed retaining wall systems shall be properly designed and analyzed by the project Geotechnical Engineer to confirm that adjacent slopes and off-site properties would not be impacted by

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the proposed development (FEIS (Exhibit E-5) mitigation measure page 1-20). Wall designs shall comply with the latest edition of the International Building Code adopted by Snohomish County.

43. The construction plans shall show installation of street lighting at the sag curves along 60th Avenue West to provide adequate stopping and intersection sight distance for night driving (to comply with EDDS Deviation to Section 3-07, see Exhibit G.4).

Final Plat

44. The following shall appear on final plat map:

- A. Right-of-way to be dedicated along the property frontage on 60th Avenue West, as shown on the approved preliminary plat; and
- B. Access easements to drainage facilities (former SCC 30.63A.330).

45. The following additional restrictions or items shall be on the face of the final plat:

- A. "Each new dwelling unit in this development is subject to park impact fees required under Snohomish County Code 30.66A.040 for the Nakeeta Beach Park Service Area. Impact fee credits for three pre-existing lots shall apply to Lots 1-3. The remaining lots shall be subject to the park impact fee. The fee rate in effect at the time of building permit issuance shall determine the cost of the fee. Payment of these mitigation fees is required prior to building permit issuance."

- B. "Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:

\$2,054.68 per lot for mitigation of impacts on county roads paid to the county,

These payments are due prior to or at the time of building permit issuance for each single-family residence per Chapter 30.66B SCC. Notice of these mitigation payment obligations shall be contained in any deeds involving this subdivision or the lots therein."

"The lots in this subdivision will be subject to school impact mitigation fees for the Mukilteo School District. Fees will be per the certified amount in the Base Fee Schedule in effect at the time of building permit application. Fees will be collected prior to building permit issuance, in accordance with the provisions of SCC 30.66C.010. Credit shall be given for three pre-existing lots. Lots 1-3 shall receive credit."

- C. "Prior to building permit issuance verification of fire hydrant installation and written confirmation from the water purveyor of the minimum required fire flow and duration shall be provided. If the minimum required fire flow or duration cannot be met installation of an approved NFPA 13D fire suppression system shall be required for all dwelling units. Said system shall be installed and approved prior to any occupancy."

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- 1 D. "Approved numbers or addresses shall be placed on all new and existing buildings in such a position
2 as to be plainly visible and legible from the street or access way fronting the property. Numbers shall
3 contrast with their background Section 505.1 IFC."
- 4 E. "Fire apparatus access shall not be obstructed in any manner including the parking of vehicles."
- 5 F. "Membership in a homeowners association and payment of dues or other assessments for
6 maintenance purposes shall be a requirement of lot ownership and shall remain an appurtenance
7 to, and inseparable from, each lot."
- 8 G. "All existing vegetation shall be retained within the Native Growth Protection Areas, with the
9 exception of removal of hazardous trees and invasive weeds."
- 10 H. "All development within the plat shall be consistent with the PRD Official Site Plan and the landscape
11 and open space/recreation plans approved for construction under file number 05-123050 SD."
- 12 I. "All NATIVE GROWTH PROTECTION AREAS shall be left permanently undisturbed in a substantially
13 natural state. No clearing, grading, filling, building construction or placement, or road construction
14 of any kind shall occur, except removal of hazardous trees. The activities in SCC 30.91N.010 are
15 allowed when approved by the County."
- 16 J. "All open space shall be protected as open space in perpetuity. Use of the open space tracts within
17 this subdivision is restricted to those uses approved for the planned residential development. These
18 uses include open play areas, picnic areas, recreation trail system, viewing platform, drainage
19 facilities, benches, and required landscape improvements as shown on the approved site plan and
20 the approved landscape plan. Covenants, conditions, and restrictions as recorded with the plat, and
21 as may be amended in the future, shall include provisions for the continuing preservation and
22 maintenance of the uses, facilities, and landscaping in the open space as approved and constructed."

23 Prior to Recording of the Final Plat

- 24 46. Per the Corrected Division of Development Decision dated September 23, 2015 (Exhibit K.4), Frogna
25 shall obtain approval from Snohomish County to vacate unopened right-of-way within the development
26 along the alignment of 58th Place SW, 136th Street SW and 60th Avenue West. The vacation of these
27 rights-of-way shall be recorded before the recording of the final plat of Frogna Estates.
- 28 47. The required offsite pedestrian improvements on 60th Avenue West shall be constructed to the
29 specifications of Snohomish County (SCC 30.42B.140(6) and 30.66B.410).
- 30 48. Native Growth Protection Areas (NGPA) boundaries shall have been permanently marked on the site
31 prior to final inspection by the county. Permanent marking means that NGPA signs and adjacent
32 markers can be magnetically located, for example by rebar, pipe, or 20-penny nails. Frogna may use
33 other permanent methods and materials provided they are first approved by the county. Where an

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1 NGPA boundary crosses another boundary such as a lot, tract, plat, or road, the surveyor shall place a
2 rebar marker with surveyors' cap and license number at the line crossing.

3 49. Placement of NGPA signs shall be no greater than 100 feet apart around the perimeter of the NGPA.
4 FrognaI shall place at least one Type 1 sign in any lot that borders the NGPA, unless otherwise approved
5 by the county biologist. FrognaI shall submit the design and proposed locations for the NGPA to PDS for
6 review and approval prior to installation.

7 50. FrognaI shall submit a bond or other guarantee of performance to PDS and receive approval from PDS
8 that the guarantee assure compliance with the provisions of former SCC 30.42B.125.

9 51. FrognaI shall record the articles of incorporation for the homeowners association with the County
10 Auditor and furnish PDS with evidence of the recording (SCC 30.41A.675, former SCC 30.42B.210(6),
11 and SCC 30.42B.250.

12 52. FrognaI shall submit covenants, deeds, and homeowners' association bylaws and other documents to
13 PDS and receive approval for these documents. These documents shall:

- 14 A. Be prepared by the applicant and submitted together with documents otherwise required for
15 maintenance of site improvements pursuant to SCC 30.42B.250;
- 16 B. Guarantee maintenance of open space, community facilities, private roads and drives, and all other
17 commonly owned and operated property;
- 18 C. Include a certificate from an attorney stating that the documents comply with Chapter 30.42B SCC
19 requirements prior to approval by PDS;
- 20 D. Ensure permanent, ongoing maintenance of landscape areas by way of landscape maintenance
21 covenants; and
- 22 E. Take responsibility for the stormwater management system (per SCC 30.63A.350).

23 53. FrognaI shall apply to the Snohomish Health District for final plat review and comment, accompanied by
24 the current final plat review fee and a letter of water/sewer service to each lot from the provider.

25 54. Landscaping in the open space tracts and common areas shall be installed, inspected, and approved in
26 accordance with the approved site and landscape plans. A qualified landscape designer shall certify to
27 the department that the installation complies with the landscape code and the approved plans. After
28 installing the landscaping, FrognaI shall provide PDS with a landscape maintenance bond or other
29 maintenance security in an amount and form satisfactory to PDS.

30 55. Onsite pedestrian facilities and recreational amenities depicted on the approved site and landscape
31 plans shall be installed and inspected.

32 56. FrognaI shall submit a bond or other performance security for the landscaping associated with the
33 individual lots in the plat to PDS. After installation of the landscaping, FrognaI shall provide a landscape

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1 maintenance bond or other maintenance security for the required landscape improvements, in an
2 amount and form satisfactory to PDS per former SCC 30.42B.125(5)(b).

3 57. Urban frontage improvements shall have been constructed along the property frontage on 60th Avenue
4 West to the specifications of Snohomish County (SCC 30.66B.410).

5 58. Identify proposed roads/road names with approved signs. Install temporary signs at each street
6 intersection when construction of new roadways allows passage by vehicles. Signs shall be of an
7 approved size and weather resistant. Maintain temporary signs until replaced by permanent signs.

8 59. Install "No parking fire lane" striping or signage along one side of the public roads and one side of the
9 private road to ensure emergency vehicle access.

10 Prior to Building Permit Issuance for the Single Family Dwellings

11 60. A geotechnical evaluation shall establish the appropriate setback from the landslide hazard area on Lots
12 23-26 (see review of former SCC 30.62.055(1)(a)(vi), former SCC 30.62.210 and FEIS (Exhibit E.5)
13 mitigation measure, page 1-21).

14 61. Verification of fire hydrant installation and written confirmation from the water purveyor of the
15 minimum required fire flow and duration shall be provided. If the minimum required fire flow or
16 duration cannot be met, installation of an approved NFPA 13D fire suppression system shall be required
17 for all dwelling units. Said system shall be installed and approved prior to any occupancy.

18 62. For Lots 23-26, final setbacks for individual buildings next to the top of a descending slope of a landslide
19 hazard area will be established at the building permit stage using the adopted International Building
20 Code (IBC) adopted by Snohomish County at the time a complete building permit application is
21 received. (FEIS (Exhibit E.5) mitigation measure, page 1-21).

22 Prior to Building Occupancy of Each Structure

23 63. Installation of all required landscaping associated with the individual building lot shall be complete. A
24 qualified landscape designer shall certify to the department that the installation complies with the code
25 and the approved plans (former SCC 30.25.043).

26 64. A bond or other guarantee of performance shall be required for maintenance of landscape
27 improvements in an amount and for satisfactory to the director of PDS prior to occupancy of any unit,
28 consistent with former SCC 30.42B.125(5).

29 65. On-site feature for TDM compatibility, i.e. sidewalks and trails, shall be constructed before any
30 certificate of occupancy or final inspection will be issued per SCC 30.66B.640(4).

31 General Conditions

32 66. All development activity shall conform to the requirements of Chapter 30.63A SCC.

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67. Nothing in this decision excuses the applicant, owner, lessee, agent, successor, or assigns from compliance with any other federal, state or local statutes, ordinances, or regulations applicable to this project.

68. Preliminary plats which are approved by the county are valid for five (5) years from their effective date and shall be recorded within that time period unless an extension has been properly requested and granted pursuant to Section 30.41A.300.

Decision issued this 25th day of May, 2016.


Peter B. Camp
Hearing Examiner

VII. EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

The decision of the Hearing Examiner is final and conclusive with rights of appeal as described below. However, reconsideration by the Examiner may also be sought by one or more parties of record. The following paragraphs summarize the reconsideration and appeal processes. For more information about reconsideration and appeal procedures, please see chapter 30.72 SCC and the respective Examiner and Council Rules of Procedure.

A. Reconsideration

Any party of record may ask the Examiner to reconsider his decision **on or before June 6,¹⁸¹ 2016**. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2nd Floor, Robert J. Drewel Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: 3000 Rockefeller Avenue M/S 405, Everett WA 98201). There is no fee for filing a petition for reconsideration. **The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record on the date of filing the petition for reconsideration.** SCC 30.72.065.

A petition for reconsideration does not have to be in a special form but must contain the name, mailing address and daytime telephone number of the petitioner, the signature of the petitioner or of the petitioner's attorney, if any; identify the specific findings, conclusions, actions or conditions for which reconsideration is requested; state the relief requested; and, where applicable, identify the specific nature of any newly discovered evidence or changes proposed by the Applicant.

¹⁸¹ The tenth day falls on Saturday, June 4, 2016. The deadline therefore extends to the next business day, Monday, June 6, 2016.

The grounds for seeking reconsideration are limited to the following:

- (a) The Hearing Examiner exceeded his jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching his decision;
- (c) The Hearing Examiner committed an error of law;
- (d) The Hearing Examiner's findings, conclusions or conditions are not supported by the record;
- (e) New evidence is discovered which could not reasonably have been produced at the hearing and which is material to the decision; or
- (f) The Applicant proposed changes to the application in response to deficiencies identified in the decision.

Petitions for reconsideration will be processed and considered by the Hearing Examiner pursuant to the provisions of SCC 30.72.065. Please include the County file number in any correspondence regarding this case.

B. Appeals

1. Appeal of SEPA Decision

The decision on the appeal of the SEPA threshold determination is a final decision of the Hearing Examiner, but may be appealed by filing a land use petition in the Snohomish County Superior Court. If no party of record requests reconsideration, the petition to the Superior Court **must** be filed with the Superior Court Clerk no later than **21 days after this decision issued**. The date of issuance is calculated by RCW 36.70C.040(4). If a request for reconsideration is filed by any party of record, the Superior Court action **must** be filed no later than twenty-one days after the reconsideration decision is issued. The date of issuance of any reconsideration decision is calculated by RCW 36.70C.040(4). For more information about appeals to Superior Court, including, but not limited to, required steps that must be taken to appeal this decision, please see the Revised Code of Washington, Snohomish County Code, and applicable court rules.

The cost of transcribing the record of proceedings, of copying photographs, video tapes, and oversized documents, and of staff time spent in copying and assembling the record and preparing the return for filing with the court shall be borne by the petitioner. SCC 2.02.195(1) (b) (2013). Please include the county file number in any correspondence regarding this case.

2. Appeal of Plat Alteration and Preliminary Subdivision Decisions

a. Deadline

Any party of record may appeal the decision on the plat alteration or preliminary subdivision approval to the County Council by filing an appeal **on or before June 8, 2016**. A party of record does not have to ask for reconsideration before appealing to the County Council. If someone requested reconsideration pursuant to

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1 SCC 30.72.065, no appeal may be filed until the reconsideration petition has been decided by the Hearing
2 Examiner. If someone requests reconsideration, the party seeking reconsideration can only raise issues on
3 appeal that were identified in the petition for reconsideration.

4 b. How to Appeal

5 Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the
6 Department of Planning and Development Services, 2nd Floor, County Administration-East Building, 3000
7 Rockefeller Avenue, Everett, Washington (Mailing address: 3000 Rockefeller Avenue M/S 604, Everett, WA
8 98201), and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00) for each
9 appeal filed; PROVIDED, that the fee shall not be charged to a department of the County. The filing fee shall
10 be refunded in any case where an appeal is summarily dismissed in whole without hearing under SCC
11 30.72.075.

12 An appeal must contain the following items in order to be complete: a detailed statement of the grounds
13 for appeal; a detailed statement of the facts upon which the appeal is based, including citations to specific
14 Hearing Examiner findings, conclusions, exhibits or oral testimony; written arguments in support of the
15 appeal; the name, mailing address and daytime telephone number of each appellant, together with the
16 signature of at least one of the appellants or of the attorney for the appellant(s), if any; the name, mailing
17 address, daytime telephone number and signature of the appellant's agent or representative, if any; and
18 the required filing fee.

19 The grounds for filing an appeal shall be limited to the following:

- 20 (a) The decision exceeded the Hearing Examiner's jurisdiction;
21 (b) The Hearing Examiner failed to follow the applicable procedure in reaching his decision;
22 (c) The Hearing Examiner committed an error of law; or
23 (d) The Hearing Examiner's findings, conclusions or conditions are not supported by substantial
24 evidence in the record. SCC 30.72.080

25 Appeals will be processed and considered by the County Council pursuant to the provisions of chapter
26 30.72 SCC. Please include the County file number in any correspondence regarding the case.

27 Staff Distribution:

28 Department of Planning and Development Services: Ryan Countryman

29 The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request
30 a change in valuation for property tax purposes notwithstanding any program of revaluation." A copy of
31 this Decision is being provided to the Snohomish County Assessor as required by RCW 36.70B.130.

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EXHIBIT A

Before the
HEARING EXAMINER

Snohomish County, Washington

LIST OF EXHIBITS & WITNESSES

Applicant: FROGNAL ESTATES, LLC

Case No.: 05-123050 SD

Appellant: Picnic Point Preservation Committee

Project: Frognal Estates (FKA Horseman's Trail)

EXHIBITS: Submitted for the February 29, 2016 open record hearing:

A. APPLICATION:

1. Master Permit Application, received 8/4/05
2. Horseman's Trail Master Permit Application, Concurrent Division of Development, PRD Rezone, Preliminary Plat and Plat Alteration Requests, received 8/4/05
3. Horseman's Trail PRD Plat Division of Development, dated 8/3/05
4. Request for Plat Alteration, Regatta Estates Final Plat, dated 8/4/05
5. Plat Name Reservation Certificate, expired 12/2/05
6. 60th Ave W Conceptual Views, received 5/25/06
7. Plat Name Reservation Certificate, dated 2/8/16 (Expires 2/8/17)

B. PLANS:

1. Planned Residential Development Official Site Plan, REVISED, including sheets P1-9, C1-10, received 12/26/06
2. Traffic Data Plan, Sheet T1, received 12/26/06
3. Horseman's Trail Landscaping Plan, Sheets L1-9, received 12/26/06
4. *SUPERSEDED* Horseman's Trail Civil Plat Plan and Cover Sheet, Sheets C1-10, received 5/25/06
5. *SUPERSEDED* Traffic Data Plan, Sheet T1, received 8/4/05
6. *SUPERSEDED* Planned Residential Development Official Site Plan, including sheets P1-10, L1-2, C1-10 received 8/4/05
7. *SUPERSEDED* Landscaping Plan, Sheets L1-L2, received 8/4/05
8. *SUPERSEDED* Civil Plat Plan, Sheets C1-C10, received 8/4/05

C. REPORTS:

1. *SUPERSEDED* Horseman's Trail Residential Traffic Impact Analysis, prepared by Perteet Engineering, dated 6/30/05

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2. Froggnal Estates Development Traffic Impact Analysis, prepared by Gibson Traffic Consultants, March 2015
3. *SUPERSEDED* Horseman's Trail Targeted Drainage Plan Revised December 2006, prepared by Lervik Engineering
4. *SUPERSEDED* Horseman's Trail Targeted Drainage Plan, prepared by Land Technologies, Inc., Revised May 2006
5. Horseman's Trail Stormwater Report, Drainage Analysis, Runoff Calculations, Stormwater Pollution Prevention Plan, prepared by Land Technologies, Inc., received 8/4/05
6. Geotech Reports From 1998 – 2006 Horseman's Trail, LLC, received 12/26/06.
7. *SUPERSEDED* Off Site Analysis Report Horseman's Trail PRD, prepared by Anthony Burgess Consulting, September 2008.
8. *SUPERSEDED* Horseman's Trail Geotechnical Conditions Report, prepared by Anthony Burgess Consulting, September 2008.
9. *SUPERSEDED* Groundwater Conditions Horseman's Trail PRD, prepared by Anthony Burgess Consulting, received 9/28/08
10. Revised Subsurface Exploration, Geologic Hazard, and Preliminary Geotechnical Engineering Report, prepared by Associated Earth Sciences, Inc., dated 8/3/05
11. Horseman's Trail/Froggnal Estates Associated Earth Sciences (AESI) Geotechnical Reports cited in Anthony Burgess Consulting (ABC) Peer Review Technical Appendices, prepared by Anthony Burgess Consulting, July 2014.
12. Stormwater Infiltration Horseman's Trail Development, prepared by Associated Earth Sciences, Inc., dated 8/11/06
13. *Exhibit number not used*
14. Revised Supplemental Subsurface Exploration, Geologic Hazard, and Geotechnical Engineering Study, prepared by Associated Earth Sciences, dated May 22, 2006
15. Revised Subsurface Exploration, Geologic Hazard, and Preliminary Geotechnical Engineering Report, prepared by Associated Earth Sciences, dated 8/3/05 - *Report also included in C.6*

D. PROPERTY:

1. Ownership – Zoning Map, dated 8/11/05
2. Aerial Photo – Sec 33, Twp 28, Rng 4E
3. Verification of Legal Description, dated 8/12/05
4. Plat of Regatta Estates, recorded 2/21/96, Auditor File Number 9602215004

E. ENVIRONMENTAL:

1. Environmental Checklist, received 8/4/05
2. Determination of Significance and Request for Comments on Scope of EIS, signed 4/27/07
3. Horseman's Trail/Froggnal Estates Draft Environmental Impact Statement, July 2014
4. Horseman's Trail/Froggnal Estates Technical Reports Appendices to the Draft EIS, July 2014
- 4A. Target Drainage Report Horseman's Trail PRD Technical Appendix A to the Horseman's Trail/Froggnal Estates PRD EIS, by Anthony Burgess Consulting, Inc., dated September

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- 1 4B Horseman's Trail Geotechnical Conditions Report Technical Appendix B by Anthony Burgess
2 Consulting, Inc., dated September 2013
- 3 4C Off Site Analysis Report Horseman's Trail PRD Technical Appendix C to the Horseman's
4 Trail/Frognal Estates PRD Environmental Impact Statement by Anthony Burgess Consulting,
5 Inc., dated September 2013
- 6 4D Attachment C: Wetland Analyses by Anthony Burgess Consulting, Inc., dated September
7 2013
- 8 4E Groundwater Conditions Horseman's Trail PRD Technical Appendix D by Anthony Burgess
9 Consulting, Inc., dated September 2013
- 10 5. Horseman's Trail/Frognal Estates Final Environmental Impact Statement, dated September
11 2015.

12
13 **F. NOTICE AND ROUTING DOCUMENTS:**

- 14 1. Public Notice Payment Agreement, signed 8/5/05
- 15 2. Affidavit of Mailing – Notice of Application, signed 8/10/05
- 16 3. Posting Verification – Notice of Application, signed 8/10/05
- 17 4. Affidavit of Notification (publication) – Legal Notice Publication, signed 8/15/05
- 18 5. Affidavit of Mailing – Determination of Significance & Request for Comments on Scope of
19 EIS, signed 5/4/07
- 20 6. Affidavit of Notification (publication) – Determination of Significance & Request for
21 Comments on Scope of EIS, signed 5/10/07
- 22 7. Posting Verification – Determination of Significance & Request for Comments on Scope of
23 EIS, signed 5/11/07
- 24 8. Affidavits of Mailing – Postcard Notice of Draft EIS Availability, signed 7/18/14
- 25 9. Affidavits of Mailing – Draft EIS CD Copy, signed 7/23/14
- 26 10. Affidavit of Mailing – Postcard Notice of Publication of Final Environmental Impact Statement
27 (FEIS), Open Record Hearing, Concurrency and Traffic Impact Fee Determination, signed
28 9/10/15
- 29 11. Affidavit of Notification (publication) – Legal Notice Publication, signed 9/14/15
- 30 12. Posting Verification – Notice of Publication of Final Environmental Impact Statement (FEIS),
31 Open Record Hearing, Concurrency and Traffic Impact Fee Determination, signed 9/18/15
- 32 13. Affidavit of Mailing – Postcard Notice of Cancelled Open Record Hearing et al, signed 10/5/15
- 33 14. Affidavit of Notification (publication) – Legal Notice of Cancellation of Open Record Hearing,
34 signed 10/7/15
- 35 15. Cancellation of Hearing Document Release, signed 10/8/15
- 36 16. Posting Verification – Notice of Cancellation of Open Record Hearing, Appeal Final
37 Environmental Impact Statement (FEIS), Concurrency and Traffic Impact Fee Determinations,
38 signed 10/12/15
- 39 17. Public Notice Payment Agreement, dated 9/4/15
- 40 18. Affidavit of Notification (publication) – Legal Notice Publication, signed December 15, 2015

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19. Posting Verification – Combined Notice of Open Record Hearing: SEPA Appeal, Concurrency and Traffic Impact Fee Determinations, signed 12/9/15
20. Affidavit of Mailing – Postcard Notice of Open Record Hearing et al, signed 2/1/16
21. Affidavit of Notification (publication – Legal Notice Publication, signed 2/1/16
22. Posting Verification – Notice of Open Record Hearing, signed 2/1/16 with attached Hearing Document Release
23. Affidavit of Mailing – Postcard Notice for three addresses, signed 2/16/16
24. Affidavit of Publication – Everett Daily Herald – signed 2/3/16

G. OTHER SUBMITTAL ITEMS:

1. EDDS Deviation Request, Section 5-11(D)(11), Stormwater Treatment Location, dated 8/3/05
2. EDDS Deviation Request, Section 3-050, Road Standard, dated 8/3/05
3. Letter to David Lervik, Land Technologies, Inc. from Dave Ostergaard, PDS, dated 6/5/06 with attached *DENIED* EDDS Deviation Request, Section 3-08B, Stopping Sight Distance on 60th Ave W, signed 6/2/06
4. Letter to David Lervik, Land Technologies, Inc. from Dave Ostergaard, PDS, dated 6/5/06 with attached EDDS Deviation Request, Section 3-07A, Maximum Grades on 60th Ave W, signed 6/2/06
5. Letter to Bob Pemberton, PDS, from Merle Ash, Land Technologies, Inc., dated 12/26/06
6. Letter to Bob Pemberton, PDS, from Merle Ash, Land Technologies, Inc., dated May 25, 2006
7. *DENIED* EDDS Deviation Request, Section 3-08B, Intersection Sight Distance, dated 11/1/05

H. CITY / AGENCY COMMENTS:

1. Request for Review to Alderwood Water & Wastewater District from Dan Scheil, dated 8/24/05
2. Request for Review to Mukilteo School District #6 from Josette Baines, dated 08/11/05
3. Letter to Pemberton, PDS, from Dennis Armstrong, Mukilteo School District, dated 09/23/05
4. Email to Ryan Countryman, PDS, from Cindy Steigerwald, Mukilteo SD, sent 9/17/15
5. City of Mukilteo Resolution 2007-05, signed 3/5/07
6. Letter to Pemberton, PDS, from Brent Raasina, Snohomish Health District, dated 8/17/05
7. Letter to Pemberton, PDS, from Dean Saksena, Snohomish County PUD No.1, dated 8/19/05
8. Letter to Pemberton, PDS, from Victoria Yeager, Stillaguamish Tribes, dated 08/15/05
9. Letter to Pemberton, PDS, from Ramin Pazooki, WDOT, dated 8/30/05
10. *Exhibit number not used*
11. Letter to Countryman, PDS, from Picnic Point PTA, postmarked 11/16/15
12. Email and attachments to Countryman, PDS, from Todd Zackey, Tulalip Tribes, sent 12/4/15
13. Letter/Email to Countryman, PDS, from Doug Gresham, DOE, sent 12/7/15
14. Letter to the Hearing Examiner from City of Mukilteo - Jennifer Gregerson, Mayor & Bob Champion, Council President, dated 1/5/15
15. Water and Sewer Availability Letter from Dan Scheil, Alderwood Water & Wastewater District, dated 1/11/16
16. Letter to Ryan Countryman, PDS, from Todd Zachey, Tulalip Tribes, dated 2-16-16

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17. Email to Ryan Countryman, PDS, from Maria DeGuzman-Acuario, DPW, sent 2/29/16 with attachment re: Alderwood Water & Wastewater easement
18. Letter to the Hearing Examiner from Paul Coffelt, City of Lynnwood, dated 2/23/16

I. PUBLIC COMMENTS:

1. Email to Countryman, PDS, from Richard and Alicia Ahlgreen, sent 12/10/15
2. Email to Paul MacCready, PDS, from Diana and Vrezh Akopyan, sent 8/1/14
3. Emails to Pemberton, PDS, from Anthony Alleman, sent 6/20/06 & 1/11/07
4. Email from E. Michael Allen, sent 2/21/07
5. Email to Pemberton, PDS, from Deonne & Ariel Almacen, sent 6/22/06
6. Letter to PDS from Arthur Almer, dated 6/16/06
7. Email to Pemberton, PDS, from Elizabeth Altabef, sent 2/23/07
8. Email to Pemberton, PDS, from Joyce Altaras, sent 5/23/07
9. Email to Pemberton, PDS, from Greg Alviar, sent 5/26/07
10. Letter to from Alice Anderson, dated 2/21/07
11. Letter and Email to Pemberton, PDS, from Gayle Anderson, dated 6/22/06 & 2/19/07
12. Letters to Pemberton, PDS, from Dr. Rocky and Cynthia Andreini, dated 9/5/05 & 6/22/06
13. Email and Letter to MacCready, PDS, from James Angiuli, sent 8/30/14, 2/8/07 & 11/24/15
14. Letters and Email to MacCready, PDS, from Z.F. and Mary Baczewski, dated 8/4/14 & 8/21/14
15. Emails to Pemberton, PDS, from Shanon Bailey, sent 2/26/07 & 5/11/07
16. Emails to Ladiser and Pemberton, PDS, from Elizabeth Baker, sent 2/21/07 & 5/19/07
17. Email to Countryman, PDS, from Bill Barnsdale, sent 12/15/15
18. Email to Pemberton, PDS, from Ellen Bartlett, sent 3/22/07
19. Email to Countryman, PDS, from Lisa Barton, sent 12/18/15
20. Letters and Email to Pemberton and MacCready, PDS, from Karen & David Baserman, dated 6/21/06, 5/16/07 & 8/18/14
21. Emails to Pemberton, PDS, from Michelle BeRoth, sent 1/10/07 & 5/13/07
22. Emails to Pemberton and MacCready, PDS, from Fred Beavon, sent 6/29/06 & 8/8/14
23. Letter to Pemberton, PDS, from Greg and Lori Bell, dated 12/5/05
24. Email to MacCready, PDS, from Maren Benedetti, sent 8/20/14
25. Emails and Letter to Pemberton, PDS, from William Benson, sent 6/21/06, 5/15/07 & 7/11/14
26. Email to Countryman, PDS, from Casey Berg, sent 12/15/15
27. Letter to MacCready, PDS, from Hans Berkenhoff, dated 8/7/14
28. Letter to MacCready, PDS, from Mary Berkenhoff, dated 8/7/14
29. Email to County Executive and Pemberton, PDS, from Sonya Bersch, sent 1/11/07
30. Email to Pemberton, PDS, from Talmadge Birdsong, sent 6/19/06
31. Email and Letter to Pemberton, PDS, from Deidre and Richard Blankenship, sent 6/17/06 & 5/11/07
32. Email to Darryl Eastin, PDS, from Deidre Blankenship, sent 9/24/08
33. Email and Letters to Pemberton, PDS, from Julia Blunt, sent 6/22/06, 1/10/07 & 1/11/07
34. Email to Pemberton, PDS, from Mark Blythe, sent 6/19/06
35. Letter from Rick and Robyn Bolton, received 10/9/15
36. Email to Pemberton, PDS, from Karen Boney, sent 6/17/06

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37. Email to Council and to Countryman, PDS, from Dwayne and Ann Booth, sent 12/5/15
38. Letter to Pemberton, PDS, from Marcelo Bottin, dated 9/1/05
39. Email to Countryman, PDS, from Jay Thomas Wolff Bowden, sent 12/12/15
40. Email to PDS Major Projects from Robert Boyd, sent 8/22/14
41. Email and Letter to Pemberton, PDS, from Richard and Tamra Bradford, sent 6/18/06 & 7/5/06
42. Email to Pemberton, PDS, from Susan and Andrew Bramlett, sent 6/17/06
43. Email to Pemberton, PDS, from Sara Brannan, sent 5/30/07
44. Email to MacCready, PDS, from George and Natalie Brediger, sent 8/20/14
45. Email to Pemberton, PDS, from Jay Bree, sent 6/26/06
46. Email to Pemberton, PDS, from Charles Brewer, sent 5/11/07
47. Emails to Pemberton, PDS, from Rosellen Brewer, sent 6/19/06 & 5/12/07
48. Emails to Pemberton and MacCready, PDS, from George Briggs, sent 6/21/06 & 8/22/14
49. Email to Council and to Countryman, PDS, from TJ Brooks, sent 12/5/15
50. Email to Council and to Countryman, PDS, from Terry Brown, sent 12/6/15
51. Letter to Countryman, PDS, from Bill Bryan, dated 12/3/15
52. Letter to Pemberton, PDS, from Mike and Angie Bueing, received 6/20/06
53. Letter and Email to Pemberton, PDS, from Emma Bueren, dated 9/5/05 & 1/11/07
54. Letter and Email to Pemberton, PDS, from Sara Bueren, dated 8/29/05 & 5/23/07
55. Emails to Pemberton, PDS, from Julie and Clint Buetow, sent 6/22/06 & 1/10/07
56. Email to Eastin, PDS, from Clint Buetow, sent 9/23/08
57. Email to PDS Major Projects, from Anna Burago, sent 8/11/14
58. Emails from Chris Burdett, sent 6/18/06, 9/23/08 & 8/7/14
59. Email to MacCready, PDS, from Julie Burson, sent 7/25/14, and email to Countryman, PDS, sent 11/25/15
60. Emails to Pemberton, PDS, from Mark Burton, sent 6/19/06 & 1/9/07
61. Email to Countryman, PDS, from Jessica Butcher, sent 11/25/15
62. Email from Sophia Byquist, sent 3/15/07
63. Letter and Emails from Kristine Calawa, dated 9/5/05, 1/10/07, 9/25/08, 8/6/14 & 8/11/14
64. Letter and Email to Pemberton and MacCready, PDS from Rick Calawa, dated 9/5/05 & 8/22/14
65. Email to Pemberton, PDS, from Donald Campbell, sent 6/19/06
66. Email to MacCready, PDS, from Frank Carlstedt, sent 8/19/14
67. Email to MacCready, PDS, from Mary Carlstedt, sent 8/18/14
68. Email to Pemberton, PDS, from the Carroll Family, sent 6/20/06
69. Emails to County Executive and Pemberton, PDS, from Ann Carter, sent 2/21/07 & 5/14/07
70. Emails to Pemberton, PDS, from Jon Cash, sent 6/21/06 & 2/11/07
71. Email to Pemberton, PDS, from Blaine Charette, sent 6/21/06
72. Email to Pemberton, PDS, from Tong and Sang Cho, sent 7/5/06
73. Emails to Pemberton, PDS, from Donald and Olga Clarke, sent 6/22/06 & 1/9/07
74. Fax to Pemberton, PDS, from Don Clarke, not dated
75. Letter to MacCready, PDS, from Coeyn, Kristina, Peter and (indecipherable writing), not dated
76. Email to Countryman, PDS, from Kathleen Collins, sent 12/10/15

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77. Email to Pemberton, PDS, from Daren and Carol Compton, sent 6/22/06
78. Email to Pemberton, PDS, from Leslie and Tony Conti, sent 6/20/06
79. Email to MacCready, PDS, from Peggy Cox, sent 8/17/14
80. Email to Pemberton, PDS, from Tim Dahl, sent 5/30/07
81. Email to Pemberton, PDS, from Jeff Danks, sent 5/10/07
82. Email and Letter to Pemberton, PDS, from David Darr, sent 6/22/06 & 1/16/07
83. Emails from Oksana Davidson, sent 2/26/07 and 5/10/07
84. Email to Pemberton, PDS, from Josh Davis, sent 6/21/06
85. Email to Pemberton, PDS, from Randy Davis, sent 6/21/06
86. Email to Countryman, PDS, from Debbie and Tom Dawson, sent 12/5/15
87. Emails to Pemberton, PDS, and Eastin, PDS, from Richard DeCuir, sent 6/16/06 & 9/23/08
88. Letter to Pemberton, PDS, from Thomas and Judith Derpock, received 11/4/05
89. Emails to Pemberton, PDS, from Glenn and Joyce Deutsch, sent 6/16/06 & 5/19/07
90. Email and Letter to Pemberton, PDS, from Wayne DeWitt, sent 6/21/06 & 6/21/06
91. Email to Pemberton, PDS, from Michelle Dombroski, sent 6/20/06
92. Letters to Pemberton, PDS, from Betty Dominy, dated 12/7/05 & 12/07/05
93. Email to Pemberton, PDS, from Blaine Donnelson, sent 5/10/07
94. Letter to Pemberton, PDS, from Llyn Doremus, Waterworks Consultants, dated 6/14/07
95. Email from Beverly Droppelman, sent 9/18/15
96. Emails to Pemberton, PDS, from Cary and Kelly Dukes, sent 6/22/06 & 5/19/07
97. Letters and Email to Pemberton, PDS, from Sandra & Warren Eddy, dated 10/18/05 & 6/19/06
98. Email to Pemberton, PDS, and Letter to Craig Ladiser, from Jan and Barbara Edmondson, sent 6/22/06 & 2/6/07
99. Email to Pemberton, PDS, from Barbara Eli, sent 1/10/07
100. Letter to Reardon from E-MAC (Edmonds Mukilteo Action Committee), dated 01/24/07, Fax to Ladiser, dated 2/8/07 & Fax to Pemberton, dated 2/9/07
101. Email to MacCready, PDS, from Marina Espinoza, sent 8/21/14
102. Email and Letters from Jeffrey Eustis, Attorney, dated 1/16/09, 10/5/05, 6/21/06 & 9/4/14
103. Letter to Pemberton, PDS, from Mark and Liliana Evanger, dated 9/2/05
104. Letter from Susan Felber, dated 8/29/05
105. Letter to Pemberton, PDS, from Ray and Sharon Feather, dated 9/2/05
106. Letter to Pemberton, and Email to MacCready, PDS, from Mark Feijo, dated 8/22/05 & 8/20/14
107. Email to MacCready, PDS, from Darcie Feijo, sent 8/19/14
108. Email to MacCready, PDS, from Christa Fields-Howser, sent 8/19/14
109. Emails to Pemberton, PDS, from Laurie Filzen, sent 2/20/07 & 6/20/06
110. Email to Pemberton, PDS, from Walt and Lin Fisch, sent 6/15/06
111. Email to Countryman, PDS, and to Council, from Frank Flight, sent 12/2/15
112. Email to Countryman, PDS, from Jo Marie Ford, sent 11/22/15
113. Emails and Letter to Pemberton, PDS, from J. Patrick Ford, sent 6/19/06, 1/12/07 & 1/15/07
114. Email to Pemberton, PDS, from Jennifer Fugleberg, sent 6/20/06
115. Email to Pemberton, PDS, from Blair Furman, sent 5/30/07
116. Email to Pemberton, PDS, from Mark Fussell, sent 7/8/06

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117. Emails to Pemberton, PDS, from Richard Gabel, sent 6/20/06 & 1/9/07
118. Letter to Pemberton, PDS, from Deanna Gabelein, dated 6/19/06
119. Email to Pemberton, PDS, from Tonja Gabryshak, sent 6/15/06
120. Letter and Emails to Pemberton and MacCready, PDS, from Joe & Glenna Gaddy, dated 10/23/05, 6/21/06 & 8/21/14
121. Email to MacCready, PDS, from Stefphan Gambill, sent 8/6/14
122. Emails to Pemberton, PDS, from John Gary, sent 2/20/07 & 5/10/07
123. Letter to Countryman, PDS, from Frank and Mary Garza, dated 12/10/15
124. Letters to Pemberton, PDS, and to Countryman, PDS, from Henry and Louise Gee, dated 11/5/05 & 12/6/15
125. Email to Eastin, PDS, from Cathy Gemkow, sent 1/12/09
126. Email to Pemberton, PDS, from Orvalle Gerfin, sent 2/20/07
127. Emails (2) to Countryman, PDS, from Gerry Gibson, sent 12/3/15
128. Letter and Email to Pemberton, PDS, from Matthew Gillingham, dated 12/6/08 & 2/23/07
129. Letter to MacCready, PDS, from Michael and Nancy Gold, dated 8/5/14
130. Email to Pemberton, PDS, from Peter and Caroline Gorlick, sent 6/22/06
131. Email to Pemberton, PDS, from Susan Gregerson, sent 6/22/06
132. Email to Pemberton, PDS, from Kirk Groehnert, sent 6/21/06
133. Email and Letter to MacCready, PDS, from Brian Gregory, dated 8/04/14
134. Email from Kelly and Anthony Grimnes, sent 2/21/07
135. Email to PDS Major Projects from Ron Grippe, sent 9/2/14
136. Letter to Pemberton, PDS, from Cathy Groehnert, dated 6/22/06
137. Email to Pemberton, PDS, from Augusta Guempel, sent 6/20/06
138. Letter to Pemberton, PDS, from Ray Guerra, dated 8/4/14
139. Email to Pemberton, PDS, from Donna and Ed Guerrero, sent 5/10/07
140. Email to Pemberton, PDS, from Thelma Gutierrez and Bahram Rushenas, sent 5/25/07
141. Email to Pemberton, PDS, from Nancy Guttinger, sent 6/20/06
142. Email to MacCready, PDS, from Noah Haglund, sent 8/7/14
143. Email to Pemberton, PDS, from Lesley Halverson, sent 6/19/06
144. Email to Pemberton, PDS, from April Han, sent 6/21/06
145. Email to Pemberton, PDS, from Robberd Hamaker, sent 6/20/06
146. Email to Pemberton, PDS, from Stacey Hansen, sent 6/22/06
147. Email to Pemberton, PDS, from Shannon Hanson-Alviar, sent 6/21/06
148. Email to MacCready, PDS, from Clyde Harman, sent 8/22/14
149. Email to Pemberton, PDS, from Jerald Harrison, sent 5/12/07
150. Email to Pemberton, PDS, from Lisa Harrison, sent 5/11/07
151. Email to Pemberton, PDS, from Robert Harvison, sent 6/20/06
152. Emails to Pemberton, PDS, from I. Gordon Hastings, sent 6/16/06 & 5/13/07
153. Fax to Ladiser, PDS, from Ian and Sheila Hastings, sent 2/6/07
154. Letter to Pemberton, PDS, from Jonathan Hatch, Atty., dated 6/8/06
155. Letter and Email to MacCready and Pemberton, PDS, from Paula and Tom Hatfield, letter not dated, email sent 6/18/06, and email to Countryman, PDS, from Paula Hatfield, sent 12/1/15
156. Emails to Pemberton, PDS, from Martin Hatscher, sent 6/22/06 & 1/16/07

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157. Email to Pemberton, PDS, from Kimberly and William Hayes, sent 6/22/06
158. Email to MacCready, PDS, from Arthur Hegvik, sent 8/22/14
159. Email to Pemberton, PDS, from Ben, Susan, Nathaniel and Hannah Hempstead, sent 2/23/07, and email to Council and to Countryman, PDS, sent 12/6/15
160. Letter to MacCready, PDS, from Viki Hennessy, not dated
161. Letter and Emails to Pemberton and MacCready, PDS, from Ann Herman, dated 9/7/05, 6/20/06, 2/20/07 & 8/3/14
162. Email to PDS Major Projects, from Judy Heydrick, sent 8/15/14
163. Email to Pemberton, PDS, from Clement and Carolyn Herzog, sent 5/19/07
164. Letter and Email to Pemberton, PDS, from Stephen Hill, dated 6/19/06 & 1/11/07
165. Email to Pemberton, PDS, from Linda Hilton, sent 6/17/06
166. Email to Countryman, PDS, from Ruth Holsinger, sent 12/3/15
167. Email to County Executive, and Pemberton, PDS, from Patti Holtgeerts, sent 3/1/07
168. Emails to MacCready, PDS, from Scott Houghtaling, sent 8/21/14 & 8/11/14
169. Letters to MacCready and Countryman, PDS, from Ronald Howser, dated 8/18/14 & 7/14/15
170. Email to Pemberton, PDS, from Timothy Hudson, sent 6/20/06
171. Email to Pemberton, PDS, from Bob Hynes, sent 6/17/06
172. Letter from Davis Hyslop, not dated, and email to Countryman, PDS, sent 11/24/15
173. Email to Pemberton, PDS, from Barbara Ingram, sent 6/23/06
174. Letter to Pemberton, PDS, from Melanie Jaeger, dated 6/19/06
175. Letter to Pemberton, PDS, from Dan Japhet, dated 11/11/05
176. Email to MacCready, PDS, from Daniel Jensen, sent 8/11/14
177. Emails to Pemberton, PDS, from Jill Johnson, sent 6/20/06 & 1/9/07
178. Emails from Reed Johnson, sent 9/22/15 & 7/22/14
179. Email and Letter to Eastin and MacCready, PDS, from Margaret Johnson, sent 1/9/09 & 7/30/14
180. Letter to Pemberton, PDS, from Paul and Sharon Johnson, dated 6/20/06
181. Email to Countryman, PDS, from Jeremy Jones, sent 12/10/15
182. Email to Pemberton, PDS, from Jeff and Laura Kane, sent 6/15/06
183. Letter to Pemberton, PDS, and Email to County Executive, from regattaand Marie Karlsen, dated 6/16/06 & 1/11/07
184. Email to MacCready, PDS, from Lisa Mintz Kavas, sent 8/12/14
185. Email to Countryman, PDS, from Julie Keenan sent 10/14/15
186. Email to Pemberton, PDS, from Dick Kellett, sent 6/20/06
187. Email to Eastin, PDS, from Kristin Kelly, sent 12/16/08 & letter dated 12/15/08
188. Letter to Pemberton, PDS, from Catherine Kenyon, dated 11/3/05
189. Email to Countryman, PDS, from Dave and Susan Kertis, sent 12/18/15
190. Email to Pemberton, PDS, from Nancy and Eric Kittleson, sent 6/22/06
191. Email to Pemberton, PDS, from Gernot and Ursula Klussmann, sent 6/19/06
192. Letters and Email to Pemberton, PDS, from Bruce and Roswitha Kneblik, dated 8/31/05, 6/20/06, 1/17/07 & 1/18/07
193. Emails to Pemberton, PDS, from Frank and Lori Koegler, sent 2/20/07 & 5/10/07
194. Email to Pemberton, PDS, from Betsy Koelzer, sent 6/28/06

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195. Emails to Pemberton and MacCready, PDS, from Kevin Koreis, sent 6/22/06, 1/17/07 & 8/20/14
196. Emails to Pemberton and MacCready, PDS, from Andrew Kosla, sent 6/20/06 & 8/22/14
197. Letters and Email to Pemberton and MacCready, PDS, from Alex Kotov, received 8/30/05, 8/30/05, 8/7/14 & 5/19/07
198. Letter and Emails to Pemberton and Eastin, PDS, from Tony and Barbara Kraft, dated 6/20/06 9/23/08 & 12/19/08
199. Emails to Pemberton and Eastin, PDS, from Marla Kroll, sent 6/20/06, 1/11/07 & 1/7/09
200. Letters to Pemberton and MacCready, PDS, from Marta Kuhr, dated 9/2/05 & 8/8/14
201. Emails and Letter to Pemberton and Eastin, PDS, from Jeff Kwon, sent 6/29/06, 1/9/07, 05/10/07, 9/24/08 & 5/10/07
202. Email and Letter to MacCready, PDS, from Cody Lane, dated 8/4/14 & 8/4/14
203. Email to Pemberton, PDS, from Sally LaBay, sent 2/23/07
204. Email to Pemberton, PDS, from Lalas Family, sent 6/21/06
205. Emails and Letter to Pemberton, PDS, from Shelley Lambeth, sent 3/7/07 & 5/15/07
206. Letter to Pemberton, PDS, from Elizabeth Landrum, dated 12/8/05
207. Email to MacCready, PDS, from Anne Lauterbach, sent 8/22/14
208. Letter to MacCready, PDS, from Debra Ledford, not dated
209. Email to MacCready, PDS, from Sun Lee, sent 8/5/14
210. Letter to Pemberton, PDS, from Norman and Darless Lehtomaki, dated 9/5/05
211. Email and letter to MacCready, PDS, from George Lemeshko, dated 9/5/14
212. Email and Letter to PDS Major Projects and MacCready, PDS, from Carolyn Leptich, dated 8/1/14 & 8/1/14
213. Letter to Pemberton, PDS, from Jim and Therese Levin, received 1/29/06
214. Emails to Pemberton, PDS, from Michael Levinson, sent 6/19/06 & 1/13/07
215. Letter to MacCready, PDS, from William Lider, Lider Engineering, dated 9/4/14
216. Emails to Pemberton, PDS, from Oscar Lopez, sent 2/19/07 & 5/10/07
217. Letter to Pemberton, PDS, from John and Mary Lucas, received 6/22/06
218. Letter and Email to Pemberton, PDS, from Gustav and Adrienne Lund, dated 10/28/05 & 2/19/07
219. Email to MacCready, PDS, from Gregg Lundgren, sent 8/20/14
220. Letter to Pemberton, PDS, from Pavel and Svetlana Lutsik, dated 6/17/06
221. Letter to MacCready, PDS, from Pavel Lutsik, dated 9/5/14
222. Letter to MacCready, PDS, from Svetlana Lutsik, dated 9/3/14
223. Email to Pemberton, PDS, from Ted Lyle, sent 6/19/06
224. Letter from Rebecca Lynne, not dated
225. Email to Council from Oksana Lysenko, sent 12/2/15
226. Email to Pemberton, PDS, from Samuel Magill, sent 6/19/06
227. Emails to Pemberton, PDS, from Ray Maker, sent 5/10/07 & 6/20/06
228. Email to Countryman, PDS, from Jim Mallery, sent 12/6/15
229. Emails to Pemberton, PDS, from Margot Malone, sent 6/15/06 & 1/10/07
230. Email to Countryman, PDS, from Cecily Mangum, sent 11/30/15
231. Email to Countryman, PDS, from Sam Manola, sent 12/10/15

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232. Email to Countryman, PDS, from The Marroquins, sent 12/3/15
233. Letter and Email to Pemberton, PDS, from William and Barbara Marshall, dated 7/5/06 & 5/20/07
234. Email to Eastin, PDS, from Marjorie Mathison, sent 5/19/07
235. Email to Pemberton, PDS, from Barbara and Mark Matter, sent 6/17/06
236. Email to Pemberton, PDS, from Teresa May, sent 2/26/07
237. Letter and Email to Pemberton, PDS, from James McArthur, dated 8/31/05 & 6/20/06
238. Letter to Pemberton, PDS, from Jennifer McCall, Lozier Homes Corporation, dated 6/20/06
239. Letter to Countryman, PDS, from Rue McCaul, dated 12/5/15
240. Email and Letter to MacCready, PDS, from Jennifer McGivern-Snofsky, sent 8/11/14 & 8/11/14
241. Email to Pemberton, PDS, from Rep. John McCoy, sent 3/23/06
242. Email to MacCready and letter to Ryan Countryman, PDS, from Dorian McGlannan, dated 8/6/14 & 10/16/15
243. Letters and Emails to Pemberton, PDS, from Nicole McGowan, dated 11/4/05, 6/20/06, 1/9/07, 3/12/07 & 5/10/07
244. Email to Pemberton, PDS, from Carlin McKinley, sent 6/22/06
245. Email to Pemberton, PDS, from Cheri McMeins, sent 6/20/06
246. Email to Pemberton, PDS, from Luke McQuade, sent 6/21/06
247. Letters and Emails to Pemberton and Eastin, PDS, from Julie Meghji, dated 9/6/05, 8/29/05 10/2/06, 3/2/07, 3/7/07, 3/9/07, 5/4/07, 11/16/07 & 2/3/09
248. Emails to Pemberton, PDS, from Sandra and Richard Menghini, sent 6/21/06, 6/22/06 & 1/17/07
249. Email to MacCready, PDS, from Tom Merisko, sent 8/5/14
250. Emails to Pemberton, PDS, from Bob Michajla, sent 6/15/06 & 5/21/07
251. Letters to Pemberton, PDS, and Reardon, from Dennis Michelson, dated 6/22/06, 1/19/07 & 1/26/07
252. Letter to MacCready, PDS, from John and Bobbi Miller, dated 8/2/14 & email sent 11/30/15
253. Email to Eastin, PDS, from Dan Miller, sent 6/20/06
254. Email to Pemberton, PDS, from Kay Mincy, sent 6/16/06
255. Letter and Email to Pemberton, PDS, from Kathy Mink, dated 1/9/07 & 6/20/06
256. Email to MacCready, PDS, from Lisa Mintz Kavas, sent 8/12/14
257. Email to MacCready, PDS, from Richard Mochow, sent 8/13/14
258. Email to MacCready, PDS, from Suzanne Painter Mochow, sent 8/21/14
259. Letter to Countryman, PDS, from Alexandra Mongiello-Reyes, dated 12/3/15
260. Letter to Countryman, PDS, from William Mongiello, dated 12/7/15
261. Email to Pemberton, PDS, from Herb and Diann Morrison, sent 6/22/06 & 12/5/15
262. Emails to Pemberton and MacCready, PDS, from Hans Mortelmans, sent 6/19/06, 2/5/07 & 8/22/14
263. Letter to Pemberton, PDS, from Tracy Moshinsky, dated 6/20/06 & email sent 11/20/15
264. Letter to Pemberton, PDS, from Yuri Moshinsky, dated 6/20/06
265. Email to Pemberton, PDS, from Lilia Mullins, sent 6/19/06
266. Letter and Email to MacCready, PDS, from Gary and Heidi Munson, dated 8/1/14

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- 1 267. Email to PDS Major Products from John Murphy, sent 9/8/14
2 268. Email to Pemberton, PDS, from Susan Murphy, sent 6/16/06
3 269. Emails from Emily Mydynski, sent 7/22/14, 8/4/14, 8/7/14, 8/6/14, 8/11/14, 8/29/14 &
4 9/24/14
5 270. Email to MacCready, PDS, from Melissa Mydynski, sent 8/4/14
6 271. Emails to Pemberton, PDS, from Debbie Myers, sent 1/9/07 & 6/20/06
7 272. Email to Pemberton, PDS, from Randy Myers, sent 6/20/06
8 273. Email to MacCready, PDS, from Nick Nam, sent 8/2/14
9 274. Letter to Pemberton, PDS, from Thomas and Debra Nelson, dated 6/19/06
10 275. Emails to Pemberton, PDS, from Tom and Debby Nelson, sent 5/23/07, 9/25/08 & 12/5/15
11 276. Email to Eastin, PDS, from Pamela Nelson, sent 5/23/07
12 277. Emails to Pemberton, PDS, from Darren Neubauer, sent 6/20/06 & 1/22/07
13 278. Emails to Eastin, PDS, from the Neumeister family, sent 6/22/06 & 5/10/07
14 279. Email to MacCready, PDS, from Phuong Nguyen, sent 9/4/14
15 280. Letter to Pemberton, PDS, from Meg Nguyen, dated 6/18/06
16 281. Email to Eastin, PDS, from Betty and Larry Nilson, sent 5/30/07
17 282. Email to Pemberton, PDS, from Thomas and Madeline Norman, sent 6/19/06
18 283. Email to MacCready, PDS, from Kevin Norris, sent 8/15/14
19 284. Letter to MacCready, PDS, from Peggy Nystrom, not dated
20 285. Letter to Pemberton, PDS, from Shawn and Esther O'Gara, dated 6/21/06
21 286. Email to Pemberton, PDS, from Chuck Ogden, sent 6/19/06
22 287. Emails to Pemberton, MacCready, and Countryman, PDS, from Brian O'Hea, sent 6/15/06,
23 8/5/14 & 7/20/15
24 288. Letter and Email to Pemberton, PDS, from Gregory Oliver, dated 8/26/05 & 8/7/14
25 289. Email to Pemberton, PDS, from Linda and Ronald Olsen, sent 2/21/07
26 290. Email to Countryman, PDS, from Douglas and Christine Orr, sent 11/27/15
27 291. Email to Pemberton, PDS, from Dana Osborn, sent 6/15/06
28 292. Email to MacCready, PDS, from Melissa Osborn, sent 8/4/14
29 293. Letter and Email to Pemberton, PDS, from Steven Ourada and Kathy Mink, dated 8/17/05 &
30 6/20/06
31 294. Emails to Pemberton, PDS, from Alyssa Pasquini, sent 6/21/06 & 1/9/07
32 295. Email to Pemberton, PDS, from Deanna Paulin, sent 6/21/06
33 296. Emails to Pemberton and Eastin, PDS, from Tish Payne, sent 1/9/07 & 5/10/07
34 297. Email to Eastin, PDS, from Michael Pena, sent 9/23/08
35 298. Letter to Pemberton, PDS, from Jesse Peterson, received 5/17/07
36 299. Email to Pemberton, PDS, from Vern Peterson, sent 2/19/07
37 300. Email to MacCready, PDS, from Lisa Pieroni, sent 8/21/14
38 301. Email to Pemberton, PDS, from Richard and Lois Piispanen, sent 5/12/07 & 12/1/15
39 302. Email to MacCready, PDS, from Nataliya Polishchuk, sent 8/11/14
40 303. Email to Pemberton, PDS, from Andre Priem, sent 6/19/06
41 304. Email to Countryman, PDS, from Amber Quick, sent 12/6/15
42 305. Email to MacCready, PDS, from Natalie Ann Rand, sent 8/18/14
43 306. Email to Eastin, PDS, from Bruce Raymond, sent 5/10/07

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Decision Affirming Adequacy of EIS, Approving Plat Alteration, and Approving Planned Residential Development Preliminary
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- 1 307. Email to Pemberton, PDS, from Marsha Redman, sent 6/18/06
2 308. Letter to Pemberton, PDS, from Bethany Reid, dated 7/3/06
3 309. Emails to Pemberton, PDS, from Todd Reinke, sent 6/16/06 & 5/20/07
4 310. Email to MacCready, PDS, from Kyung Ha and Jong Ju Rhyu, sent 8/8/14
5 311. Letter to MacCready, PDS, from Mary Rieck, date received illegible
6 312. Email to Council and to Countryman, PDS, from Aaron Rinn, sent 12/5/15
7 313. Email to Pemberton, PDS, from Alexander Ripley, sent 2/19/07
8 314. Letter from Paul and Lorri Rogers, dated 2/23/07
9 315. Email to Pemberton, PDS, from Shawn Rogers, sent 6/18/06
10 316. Emails to Pemberton, PDS, from Lynda Rosi, sent 6/22/06 & 1/9/07
11 317. Email to Eastin, PDS, from Bridgette Ruis, sent 5/10/07
12 318. Letter to Executive Reardon from Michael Runestrand, dated 2/20/07
13 319. Email to Pemberton, PDS, from Charles and Dorothy Rupprecht, sent 6/21/06
14 320. Letter from Randy Russell, dated 9/11/15
15 321. Letter and Emails to Pemberton and Eastin, PDS, from Cliff Ruthrauff, dated 8/28/05, 1/10/07,
16 3/3/07 & 5/15/07
17 322. Email to Pemberton, PDS, from James and Dianna Salmon, sent 6/22/06
18 323. Letter to Pemberton, PDS, from Michael and Deanna Sanders, dated 6/19/06
19 324. Letter to MacCready, PDS, from Deanna Sanders, dated 8/13/14
20 325. Letters and Email to Pemberton and MacCready, PDS, from Ted and Jene Sanders, dated
21 9/6/05, 1/18/07 & 8/18/14
22 326. Email to Countryman, PDS, from Jeremie Sanders, sent 12/15/15
23 327. Letter to Pemberton, PDS, from Laura Sanderson, dated 2/21/07
24 328. Email to Countryman, PDS, from Mr. and Mrs. Fillmore C. Sankey, sent 12/7/15
25 329. Letter to MacCready, PDS, from Rene Sauser, dated 8/11/14
26 330. Emails to Pemberton, PDS, from LaShawn Scherting, sent 6/22/06 & 1/10/07
27 331. Letter to Pemberton, PDS, from Lawrence and SuDaniel Schmidt, dated 8/28/05
28 332. Emails and Letter to Pemberton and MacCready, PDS, from Sophia Schoop, sent 6/22/06,
29 1/9/07 & 8/7/14
30 333. Email to Pemberton, PDS, from Maryann Schuler, sent 6/21/06
31 334. Letter to Pemberton, PDS, from Karl Schuster, dated 6/20/06
32 335. Letter to Pemberton, PDS, from Maureen Schuster, dated 6/20/06
33 336. Emails to Pemberton, PDS, from Janice Scott, sent 6/21/06, 1/9/07 & 5/14/07
34 337. Email to MacCready, PDS, from Patricia Scott, sent 8/12/14
35 338. Emails to Pemberton, PDS, from Walter Scott, sent 2/25/07 & 5/19/07
36 339. Letter and Email to Pemberton, PDS, from Caroline Scull, dated 8/21/14
37 340. Email to MacCready, PDS, from Michael Scull, sent 6/20/06 & 5/23/07
38 341. Emails to Pemberton, PDS, from Paige Seaborg, sent 2/21/07 & 5/10/07
39 342. Email from Don Seckman, dated 11/29/15
40 342A. Email to MacCready, PDS, from Sharon Seckman, sent 8/7/14 and email to Countryman, PDS,
41 sent 12/1/15
42 343. Email to Pemberton, PDS, from Donna Shaw, sent 2/23/07

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Decision Affirming Adequacy of EIS, Approving Plat Alteration, and Approving Planned Residential Development Preliminary Subdivision with Pre-Conditions and Conditions

- 1 344. Email to Pemberton, PDS, from Jack Shiau, sent 6/21/06
2 345. Email to Pemberton, PDS, from Sean Shiau, sent 6/20/06
3 346. Emails to Pemberton and Eastin, PDS, from Behzad Shirinzadeh and Gizelle Dashtestani, sent
4 5/10/07 & 5/19/07
5 347. Email to Pemberton, PDS, from Janice Shouse, sent 6/20/06
6 348. Email to MacCready, PDS, from Jack and Susan Shouse, sent 8/19/14
7 349. Email to Pemberton, PDS, from Cindy Simmons, sent 6/24/06
8 350. Emails to Pemberton and MacCready, PDS, from Linda and Larry Simoneaux, sent 6/22/06 &
9 8/24/14
10 351. Letters and Emails from Joan Ann Smith, dated 9/27/05, 6/14/06, 5/10/07, 9/23/08, 7/22/13,
11 6/22/15, 11/11/06, 1/10/07, 7/20/09, 7/22/14, 7/23/14, 7/29/14, 9/23/15 & 9/28/15
12 352. Email to MacCready, PDS, from Scott Snofsky, sent 8/22/14
13 353. Email to Pemberton, PDS, from Tammy Snow, sent 6/16/06
14 354. Letter to Pemberton, PDS, from Julia and Joseph Sohlberg, dated 6/21/06
15 355. Emails to Pemberton, PDS, from Colleen Sosinsky, sent 6/21/06 & 5/19/07
16 356. Email to Eastin, PDS, from Gunars and Gayle Sreibers, sent 5/28/07, and email to Council and
17 to Countryman, PDS, sent 11/19/15
18 357. Letter to Pemberton, PDS, from Donald Stapleton, dated 6/20/06
19 358. Letter from Arleen Stenger, dated 8/15/14
20 359. Email to MacCready, PDS, from Ed Stevens, sent 8/20/14
21 360. Email to Pemberton, PDS, from Sjon Stevens, sent 6/22/06
22 361. Email to Pemberton, PDS, from Valerie Stein, sent 6/21/06
23 362. Email to Pemberton, PDS, from Joyce Stiles, sent 6/21/06
24 363. Emails to Pemberton, PDS, from Robert Stiles, sent 6/21/06 & 5/19/07
25 364. Emails to Pemberton, PDS, from Laura and Thomas Sullivan, sent 6/19/06 & 1/11/07
26 365. Emails to Pemberton, PDS, from Hyung Sun Suh and Soonhee Suh, sent 2/20/07 & 5/12/07
27 366. Letter and Email to Pemberton, PDS, from Charlotte Swartz, dated 5/17/07 & 6/20/06
28 367. Letters and Emails to Pemberton, PDS, from Susan Tarpley, dated 6/21/06 and 1/18/07,
29 6/22/06 & 1/19/07
30 368. Email to Pemberton, PDS, from Robert Taylor, sent 2/20/07
31 369. Email to Eastin, PDS, from Kay Terry, sent 10/2/08
32 370. Emails and Letter to Pemberton, PDS, from Mike Thompson, sent 6/21/06, 1/23/07 & 5/21/07
33 371. Email to Pemberton, PDS, from Rob and Lisa Thompson, sent 2/20/07
34 372. Emails to Pemberton and MacCready, PDS, from Snezhana Timoshchuk, sent 1/11/07,
35 5/11/07, & 8/2/14
36 373. Email to Pemberton, PDS, from Bryan Tinling, sent 2/21/07
37 374. Emails to Pemberton and MacCready, PDS, from Jean Tolfree, sent 2/20/07 & 8/16/14
38 375. Email to Pemberton, PDS, from Dayna Tolman, sent 9/14/06
39 376. Email to MacCready, PDS, from Anna Tourovskaia, sent 9/3/14
40 377. Email to Pemberton, PDS, from Nina Tremaglio, sent 6/20/06
41 378. Email to Pemberton, PDS, from Diane Trudgeon, sent 6/22/06
42 379. Letters and Email to Pemberton and MacCready, PDS, from Barbara James-Tupper, dated
43 9/3/05, 3/10/06, 3/11/06, & 9/3/14 with attached photos

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380. Letter to Pemberton, PDS, from Elizabeth Tupper, dated 10/18/05
381. Letter to Pemberton, PDS, from David Turpin, dated 9/2/05
382. Emails and Letter to MacCready and Pemberton, PDS, from Zia and Kristy Uddin, sent 9/6/2014, 08/08/14, 1/9/07, 6/20/06, 6/23/06, & 6/20/06
383. Email to Council and to Countryman, PDS, from Ed Upenieks, sent 11/26/15
384. Email to Council and to Countryman, PDS, from Solvita Upenieks, sent 11/26/15
385. Letter to Pemberton, PDS, from Duane Uusitalo, dated 10/30/06
386. Letter to Pemberton, PDS, from Darbi VanGerpen, dated 10/18/05
387. Email to Pemberton, PDS, from Wayson and Seanelle Vannatta, sent 6/22/06
388. Email to Pemberton, PDS, from Barbara Varouhas, sent 6/22/06
389. Letter to Pemberton, PDS, from Bob Vau, dated 6/15/06
390. Emails to Pemberton, PDS, from Kay Vint, sent 2/21/07 & 5/20/07
391. Email to Pemberton, PDS, from Maikhanh Vu, sent 6/18/06
392. Letters and Emails to Pemberton and MacCready, PDS, from Richard Waddell & Lesley Halverson, dated 10/21/05, 08/12/14, 6/17/06, 1/10/07, & 5/12/07
393. Email to Pemberton, PDS, from John Wagner, sent 6/21/06
394. Letter to Pemberton, PDS, from Doug and Cindy Warren, dated 9/13/05
395. Email to MacCready, PDS, from Cindy Warren, sent 8/5/14
396. Email to MacCready, PDS, from Ryan Wasserman, sent 8/3/14
397. Email to Countryman, PDS, from Dan Watts, sent 12/9/15
398. Emails to Pemberton, PDS, from Beth Webb, sent 6/22/06 & 1/11/07
399. Email to Pemberton, PDS, from Ed and Carol Weber, sent 6/16/06
400. Email to Pemberton, PDS, from Howard and Constance Weinstein, sent 6/22/06
401. Email to Pemberton, PDS, from Sonya and Rick Wells, sent 6/21/06
402. Email to Eastin, PDS, from Richard Wells, sent 5/19/07
403. Emails to Pemberton and Eastin, PDS, from Russell Wells, sent 2/19/07 & 9/23/08
404. Email to Pemberton, PDS, from Scott Wiggins, sent 2/25/07
405. Email to Pemberton, PDS, from Susan Wiggins, sent 5/19/07
406. Email to Pemberton, PDS, from Kathleen Wilborn, sent 2/20/07
407. Emails to Pemberton, PDS, from Matthew Wilson, sent 6/19/06, 1/17/07, 5/21/07 & 1/7/16
408. Email to Pemberton, PDS, from Alice Wirth, sent 1/6/1970 [sic]
409. Email to Eastin, PDS, from Raymond Wojcik, sent 6/22/06
410. Letter to MacCready, PDS, from Jonathon Wood, dated 9/29/14
411. Letters and Emails to Pemberton, PDS, from Grant Woodfield, received 9/7/05, 9/9/05, 5/11/07 & 6/20/06
412. Emails to Pemberton, PDS, from The Woodsound Homeowners Association Board, dated 3/26/07 & 5/10/07
413. Email to Pemberton, PDS, from WSctt1@aol.com (no name given), dated 2/25/07
414. Email to MacCready, PDS, from Clyde Yamamoto, sent 8/7/14
415. Email to MacCready, PDS, from Ruslan and Viktoriya Yakovlev, sent 8/17/14
416. Email to MacCready, PDS, from Lauren Yoho, sent 8/11/14
417. Email to Council and to Countryman, PDS, from Dr. Steven Yoon, sent 12/7/15
418. Emails to Pemberton, PDS, from James Young, sent 2/20/07 and 5/15/07

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- 1 419. Emails to Pemberton, PDS, from Sandi Young, sent 6/21/06 and 3/1/07
- 2 420. Letter to Pemberton, PDS, received 11/21/05 – Illegible name
- 3 421. Letter to Pemberton, PDS, dated 08/01/06 – No name
- 4 422. Form Letters With No Written Comments
- 5 423. Online Form Submittals to PDS Major Projects – Frogmal Estates Project – General Comments
- 6 & Party of Record Requests Online Form Submittals to PDS Major Projects – Frogmal Estates
- 7 Project – General Comments & Party of Record Requests
- 8 424. Online Form Submittals to PDS Major Projects – Frogmal Estates Project – General Comments
- 9 & Party of Record Requests Online Form Submittals to PDS Major Projects – Frogmal Estates
- 10 Project – General Comments & Party of Record Requests
- 11 425. Copies of Articles (*Proposal is a good test case for county, et al*) from the Everett Herald signed
- 12 by multiple people with various comments
- 13 426. Email from Executive office with various phone messages
- 14 427. Form Letters with No Written Comments
- 15 428. Email to Countryman, PDS, from Fei Cai & Xiaojing Shen, sent 1/3/16
- 16 429. Email to Countryman, PDS, from Mike Dilmaghani, sent 1/6/16
- 17 430. Email to Countryman, PDS, from Beverly Droppelman, sent 1/4/16
- 18 431. Email to Countryman, PDS, from Gail Everett, sent 1/2/16
- 19 432. Email to Countryman, PDS, from Jane Haug, sent 1/5/16
- 20 433. Email to Countryman, PDS, from Davis Hyslop, sent 1/5/16
- 21 434. Email to Countryman, PDS, from Reed Johnson, sent 12/30/15
- 22 435. Email to Countryman, PDS, from Jesse Lynn, sent 1/4/16
- 23 436. Email to Countryman, PDS, from Bill and Barbara Marshall, sent 12/28/15
- 24 437. Email to Countryman, PDS, from Lee and Bonnie Pendergrass, sent 01/03/16
- 25 438. Email to Countryman, PDS, from Jeffrey and Suzanne Martin Wingate, sent 12/19/15
- 26 439. Email to Countryman, PDS, from Victoria White, sent 12/17/15
- 27 440. Emails from Jeff Caldwell, sent 1/7/16 & 1/8/16
- 28 441. Email from Susan Goodwin, sent 1/8/16
- 29 442. Email from Shelley Droz, sent 1/8/16
- 30 443. Letter to the Hearing Examiner from Eric Adman, Sno-King Watershed Council, dated 1/20/14
- 31 [sic] with attachments
- 32 444. Letter to the Hearing Examiner from Kristin Kelly, Pilchuck Audubon Society, dated 1/22/15
- 33 [sic] with attachments
- 34 445. Email from Victoria White, dated 12/17/15
- 35 446. Emails from Steven Mydyski, dated 2/10/16 and 9/8/14
- 36 447. Letter from Coeyn Choi, received 2/12/16
- 37 448. Letter from Richard Kellett, dated 2/1/16
- 38 449. Comments from Jennifer Hannon, dated 2/10/16
- 39 450. Email from Shirley & Gary Lindblom, sent 1/11/16
- 40 451. Comments from David Wood, dated 2/19/16
- 41 452. Letter to the Hearing Examiner from Jonathan hatch, counsel for the Regatta Estates
- 42 Homeowner's Association, dated 2/19/16
- 43 453. Letter to the Hearing Examiner from Regatta Estates Homeowners Assoc, dated 2/25/16

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- 1 453A. Regatta Estates HOA Tree Report from Robert Williams Consulting Arborist, dated 1/4/16
- 2 453B. Letter from Regatta Estates Homeowners Association, dated 12/1/15
- 3 454. Letter to the Hearing Examiner from Sten Karlsen, dated 2/26/16
- 4 455. Letter from Norman & Darless Lehtomaki, dated 2/26/16
- 5 456. Email from Debra Ledford, dated 2/28/16
- 6 457. Comments from Tatiana Dashevskiy, sent 2/15/16
- 7 458. Email from Tatiana Dashevskiy, sent 2/29/16
- 8 459. Email from Beverly Droppelman, sent 2/29/16
- 9 460. Email from Kristen Amidon, sent 2/29/16
- 10 461. Email from Lev & Tatiana Dashevskiy, sent 2/29/16
- 11 462. Comments from Mark Whiteley, sent 2/29/16
- 12 463. Comments from Rich Andes, sent 2/29/16
- 13 464. *Number not used*
- 14 465. Figures / Maps submitted by Tony Burgess, sent 3/1/16
- 15 466. Email from David Baker, sent 3/1/16
- 16 467. Email from Deidre Blankenship, sent 3/2/16
- 17 468. Email from Marla Kroll, dated 3/7/16
- 18 469. Email from David Allais, dated 3/7/16
- 19 470. Comments from Kris Fouts, sent 3/7/16
- 20 471. Email from Julie & Sean Burson, sent 3/9/16
- 21 472. Email from Tatiana Dashevskiy, sent 3/10/16
- 22 473. Email from Shelley Droz, sent 3/13/16
- 23 474. Email from Lev & Tatiana Dashevskiy, sent 3/14/16
- 24 475. Reply and Supplemental Memorandum from Jonathan Hatch, attorney for Regatta Estates
- 25 Homeowner's Association, dated 3/12/16
- 26 476. Letter from Michael Gold, dated 3/11/16
- 27 477. Email from Joan Smith, sent 3/16/16 and 3/17/16

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478. List of Birds / Animals seen in Picnic Point Forest, received 3/17/16
479. Email from Bernadette Wojcik, sent 3/2/16
480. Comments from Nick Blattner, sent 2/17/16
481. Comments from Emily Mydynski, received 3/18/16 with attachments

J. NOT USED

K. SUBMITTED BY RESPONDENT - Department of Planning and Development Services

1. Snohomish County Planning and Development Services' List of Exhibits submitted 11/2/15
2. Respondent Snohomish County Planning and Development Department's List of Expert Witnesses, dated 11/4/15
3. *SUPERSEDED* Division of Development Decision, dated 9/10/15
4. Corrected Division of Development Decision, dated 9/23/15
5. Paine Field Area Comprehensive Plan, Amended October 1983
6. Possession Shores Master Plan, April 1, 1978
7. Review Completion Notes by Robert Pemberton, PDS, dated 7/20/06
8. Email from Ryan Countryman, PDS, to Cindy Steigerwald, Mukilteo School District, dated 9/8/15 with attachments
9. Email correspondence between Ryan Countryman and Vicki Morris dated 4/13/15
10. Memorandum to Ryan Countryman from Mark Brown, PDS, re: Transportation Concurrency Determination, dated 5/15/15
11. Memorandum to Bob Pemberton from Andrew Smith, PDS, re: Final Transportation Comments, dated 1/12/07
12. Memorandum to Darryl Eastin, PDS, from Patrick McGraner, PDS re: Horseman's Trail Draft EIS, dated 7/9/08
13. Email from McGraner to Pemberton re: Horseman's Trail Citizen Letters, dated 11/8/05
14. Respondent Snohomish County Planning and Development Department's List of Lay Witnesses and Supplemental Exhibits List re: Expert Reports from Brian Dorsey, Deputy Prosecuting Attorney, dated 12/18/15
15. 204 Subgrade Compaction and Proof Rolling, State of Ohio Department of Transportation, retrieved from <http://www.dot.state.oh.us/Divisions/ConstructionMgt/OnlineDocs/2009MOP/200%20Earth%20work/204/204%20Subgrade%20Compaction%20and%20Proof%20Rolling.htm> on December 24, 2015
16. Email correspondence between Doug Gresham, DOE, to Ryan Countryman, dated 12/29/15
17. **STAFF RECOMMENDATION** - submitted 12/30/15
18. Snohomish County Planning and Development Services' Hearing Brief RE; SEPA Appeal from Brian Dorsey, Prosecutor's Office, dated 1/4/16
19. Community Transit System Map

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20. Memorandum to Mark Brown, PDS, from David Irwin, DPW, re: IRC Review, dated 2/24/16
21. IRC Fact Sheet – 60 Ave W @ 140 St SW, with attachments dated 2/24/16
22. IRC Fact Sheet – 60 Ave W, with attachments dated 2/24/16
23. IRC Fact Sheet – 136 Pl SW @ Picnic Point Rd with attachments, dated 2/24/16

L. SUBMITTED ON APPEAL OF THE FINAL ENVIRONMENTAL IMPACT STATEMENT (FEIS)

1. Notice of Appeal from Jeffrey Eustis of Aramburu & Eustis, LLP on behalf of Picnic Point Preservation Committee, filed 10/2/15
2. Notice to Applicant / Permittee of Receipt of an Appeal issued 10/2/15
3. Notice of Prehearing Conference issued 10/8/15
4. Pre-Hearing Order issued 10/20/15

M. SUBMITTED BY APPELLANT

1. Appellant's Proposed Witnesses, submitted 10/28/15
2. Curriculum Vitae – Daniel J. Miller
3. Curriculum Vitae – Dr. Christina Bandaragoda
4. Curriculum Vitae – William (Bill) Lider
5. Curriculum Vitae – Tom Murdoch
6. Identification of Members for Purposes of Showing Picnic Point Preservation Committee to be Aggrieved from Jeffery Eustis, attorney for appellants, dated 11/13/15
7. Appellant's Expert Witnesses Reports and Exhibits from Jeffrey Eustis, dated 12/4/15
8. Lider Engineering Report from William Lider, dated 12/4/15
9. PDS Rule 3044 – Standards for Construction Stormwater Pollution Prevention PlansMim, dated 11/22/10
10. Minimum Technical Requirements (pages 2-7) – February 2005
11. Silver Tip Solutions Report from Daniel Miller and Christina Bandaragoda, dated 12/2/15
12. 17.0 Puget Sound Tributaries (DNR No. 11) Summary – December 2002
13. Juvenile Chinook Salmon Rearing in Small Non-Natal Streams Draining into the Whidbey Basin, dated 12/3/13
14. Puget Sound Tributaries Drainage Needs Report, 2.0 Basin Characterization – December 2002
15. Appellant's List of Proposed Lay Witnesses from Jeffrey Eustis, Appellant's Attorney, dated 12/17/15
16. Appellant's Hearing Memorandum from Jeff Eustis, Appellant's Attorney, dated 12/31/15
- 16.1 Regatta Estates Plat Maps
- 16.2 Regatta Estates Declaration of Covenants, Conditions, Restrictions and Easements
- 16.3 Letters to Bob Pemberton, PDS, from Jim Miller, Planning Consultant, re: Applicant's Plat Alteration Request, dated 8/3/05 and 8/4/05
- 16.4 Division of Development Decision for Frogmal Estates, dated 9/10/15
- 16.5 Corrected Division of Development Decision for Frogmal Estates, dated 9/23/15
17. Appellant's Opposition to Applicant's Dispositive Motion from Jeff Eustis, dated 12/31/15

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- 1 17.1 Letter to Ryan Countryman, PDS, from Todd Zachey, Tulalip Tribes, dated 12/3/15 with
2 attached Map – Coastal Watershed (Seattle to Everett)
3 18. Appellant's Reply Memorandum from Jeff Eustis, dated 1/8/15
4

5 **N. SUBMITTED BY APPLICANT**

- 6 1. Applicant's Disclosure of Expert Witnesses, signed 11/4/15
7 2. Curriculum Vitae – Curtis Koger
8 3. Curriculum Vitae – Anthony Burgess
9 4. Curriculum Vitae – Vicki Morris
10 5. Curriculum Vitae – Jim Miller
11 6. Curriculum Vitae – Edward Koltonowski
12 7. Curriculum Vitae – Bradly Lincoln
13 8. Rebuttal Report prepared by Anthony Burgess Consulting, Inc, Associated Earth Sciences, Inc.
14 and Land Technologies, Inc. – December 2015
15 9. Letter to Latif (John) & Kamil Lakhani from Curtis Koger, Associated Earth Sciences, re:
16 Infiltration System Case History Examples, dated 12-17-15
17 10. Email correspondence between Cindy Steigerwald, City of Mukilteo, and Ryan Countryman,
18 PDS, dated 9-17-15
19 11. Petition for Vacation of a County Road
20 12. Memorandum to Ryan Countryman from Mark Brown, PDS, re: Transportation Concurrency
21 Determination, dated 5-15-15
22 13. Figure 1.1-1 Location Map Frognal Estates
23 14. Safe Walking Plan
24 15. Ariel picture – Buffer Standards and Requirements – No Mitigation Required
25 16. 3D Visual photographs
26 17. 3D Grid Views of Frognal Estates Grading
27 18. Horseman's Trail / Frognal Estates Stormwater management Regulations
28 19. LIDAR Overview – Frognal Estates
29 20. LIDAR Based Topography – Frognal Estates
30 21. LIDAR Based Topography and Geology – Frognal Estates
31 22. Schematic Hydrogeologic Cross-Section – Frognal Estates
32 23. Schematic Hydrogeologic Cross-Section – Offsite Landslide
33 24. LIDAR Overview – Logan Ridge
34 25. LIDAR Based Topography and Geology – Logan Ridge
35 26. Site and Exploration Plan – Logan Ridge
36 27. Schematic Hydrogeologic Cross-Section A-A' – Logan Ridge
37 28. LIDAR Based Topograph – Snoqualmie Ridge
38 29. LIDAR Based Topography and Geology – Snoqualmie Ridge
39 30. Geologic Cross-Section A-A' – N1 and N2 Ponds – Snoqualmie Ridge II
40 31. Geologic Cross-Section B-B' – N1 and N2 Ponds – Snoqualmie Ridge II
41 32. Applicant's Expert Witness Reports, Supplemental Exhibits, and List of Lay Witnesses from
42 Nancy Rogers, Applicant's Attorney, dated 12/18/15

Frognal Estates

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Decision Affirming Adequacy of EIS, Approving Plat Alteration, and Approving Planned Residential Development Preliminary
Subdivision with Pre-Conditions and Conditions

33. Applicant's Dispositive Motion from Nancy Rogers, dated 12/21/15
- 33A. Stream & Wetlands Relationship to Proposed Project
34. Applicant's Hearing Outline from Nancy Rogers, Applicant's Attorney, dated 1/4/16
- 34.1 Applicant's Notice of Errata RE: Applicant's Hearing Outline, dated 1/5/16

O. SUBMITTED FOR THE OPEN RECORD HEARING

1. Snohomish County Planning and Development Services' Motion for Continuance of Hearing [Rule 2.1(d)] from Brian Dorsey, Deputy Prosecuting Attorney, dated 1/8/16
2. Email correspondence from all principal parties regarding continuance of hearing, sent 1/8/16 & 1/11/16
3. Order Striking January 11, 2016 Hearing Date issued 1/8/16
4. Order Scheduling Open Record Hearing issued 1/12/16
5. Amended Order Scheduling Open Record Hearing and Telephonic Conference issued 1/14/16
6. Order Denying Dispositive Motion issued 2/12/16

(SUBMITTED DURING THE FEBRUARY 29, 2016 OPEN RECORD HEARING)

7. Stormwater Management Manual for Western Washington –Volume I Minimum Technical Requirements and Site Planning - February 2005-
8. Drainage Existing Map
9. Snohomish County Drainage Inventory Online Mapping Tool- Surface Water Management
10. Stormwater Management Manual for Western Washington – Volume V – Runoff Treatment BMPs – August 2012
11. Easement, dated 3/1/49
12. Written comments from Joan Smith, submitted 2/29/16 with attachments
13. Photograph submitted by Mike Neumeister
14. Written comments from Picnic Point PTA, submitted 2/29/16
15. Photographs / CD from Jeff Caldwell
- 15-1. Significant Rainfall during April – September 2000 – 2015
- 15.2. Application Deficiencies Identified by Staff Report
- 15.3. Comments on Frogal Estates Proposed Development from Victor Ericson, dated 2/29/16

(SUBMITTED DURING THE MARCH 1, 2016 OPEN RECORD HEARING)

16. PowerPoint presentation of Christina Bandaragoda
17. Infiltration Feasibility Assessment Stormwater Management Plan, Mukilteo, Washington – from Aspect Consulting, dated 1/29/15

(SUBMITTED DURING THE MARCH 2, 2016 OPEN RECORD HEARING)

18. Puget Sound Coastal Streamkeepers Stream Survey Findings and Recommendations for Snohomish County, dated 4/9/14
19. Aerial photographs (2) from www.streamkeeper.org – Picnic Point Creek
20. Streamkeeper's Field Guide – Watershed Inventory and Stream Monitoring Methods –Page 177

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Decision Affirming Adequacy of EIS, Approving Plat Alteration, and Approving Planned Residential Development Preliminary Subdivision with Pre-Conditions and Conditions

21. Streamkeeper's Field Guide – Watershed Inventory and Stream Monitoring Methods –Page 167

(SUBMITTED DURING THE MARCH 8, 2016 OPEN RECORD HEARING)

22. Urban Design Tools Low Impact Development (2 pages) with highlighted annotations

23. Photographs (9) submitted by Merle Ash during testimony

24. How To: Soil Best Management Practices, Tools & Specifications with attachments

25. Excerpts from Exhibit E-3 (Draft EIS) – Figure 2.5.2-4, Figure 2.5.4-6, Figure 2.5.4-7 & Figure 2.5.5-1

26. Snohomish County Drainage Inventory Aerial photo with attached Landscape Image Map

27. Drainage Design - Duplicate of Exhibit B.1 sheet C.10 (reduced size)

28. Trilogy & Redmond Ridge Urban Planned Development Final Monitoring Report Water Years 2008 – 2010

29. Memorandum to the Hearing Examiner from Nancy Rogers and Randall Olsen re: Applicant's Memorandum in Support of Plat Alteration Affecting Lot 1 of Regatta Estates, dated 3/8/16

30. Title Report from Chicago Title

(SUBMITTED DURING THE MARCH 9, 2016 OPEN RECORD HEARING)

31. Road and Drainage Plan – Regatta Estates, dated 6/21/94

32. Applicant Frogna Estates Requested Revisions and Additions to County Proposed Conditions, submitted 3/9/16

(SUBMITTED DURING THE MARCH 18, 2016 OPEN RECORD HEARING)

33. Email from Jeffrey Eustis, Attorney for Appellants, dated 3/17/16

33A. Superseded Decision of the Hearing Examiner Revised After Resubmittal and Rehearing re: Regatta Estates (ZA 8906267) issued 10/10/91

33B. Snohomish County Council – Corrected Motion No. 92-079, dated 3/11/92

33C. Decision of the Hearing Examiner in Response to Limited Remand re: Regatta Estates (ZA 8906267) issued 3/27/92

33D. Wetland Buffer Map for Regatta Estates

33E. Additional Background on Lot 1 of Regatta Estates prepared by Snohomish County PDS 3/17/16

34. Memo to Emily Mydyski from William Lider re: Review of Regatta Estates, dated 3/17/16 – **NOT ADMITTED**

35. Inspection Report from William Lider re: Regatta Estates, Tract 992 Site Visit 3/8/16, dated 3/12/16 – **NOT ADMITTED (Photo #1, #2 (except caption) #3 and #4 (except last two sentences – admitted)**

Frogna Estates

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Decision Affirming Adequacy of EIS, Approving Plat Alteration, and Approving Planned Residential Development Preliminary Subdivision with Pre-Conditions and Conditions

1 36. Memorandum to the Hearing Examiner from Nancy Rogers and Randall Olsen re: Response
2 to Supplemental Memo of Regatta Estates Homeowners Assoc. (Exhibit I-475), dated
3 3/17/16

4 37. Horseman's Trail / Frogna! Estates Fish and Wildlife Issues received 3/18/16
5

6 **P. PROPOSED FINDINGS AND CONCLUSIONS**

7 1. Appellant's Proposed Findings of Fact from Jeffrey Eustis, dated 4/1/16

8 2. Draft Findings and Conclusions from Nancy Bainbridge Rogers, dated 3/31/16

9 3. [Proposed] Decision of the Snohomish County Hearing Examiner from Brian Dorsey,
10 received 4/1/16
11

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Ryan Countryman, PDS

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COUNSEL / WITNESSES: (3/18/16)

Frognal Estates

05-123050 SD

Decision Affirming Adequacy of EIS, Approving Plat Alteration, and Approving Planned Residential Development Preliminary Subdivision with Pre-Conditions and Conditions

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3	Jeff Eustis, Aramburu & Eustis			
4	Ryan Countryman	Randy Sleight	William Lider	Anthony Burgess
5	Edward Koltonowski	Merle Ash		
6				
7				
8				

Frognal Estates

05-123050 SD

Decision Affirming Adequacy of EIS, Approving Plat Alteration, and Approving Planned Residential Development Preliminary
Subdivision with Pre-Conditions and Conditions

ACKNOWLEDGEMENT OF FUFILLMENT OF PRE-CONDITIONS

This decision is binding but will not become effective until the above pre-condition(s) have been fulfilled and acknowledged by the Department of Planning and Development Services (PDS) on the original of the instant decision. Document(s) required for fulfillment of the pre-condition(s) must be filed in a complete, executed fashion with PDS not later than May 25, 2018.

1. "Fulfillment" as used herein means recordation with the County Auditor, approval/acceptance by the County Council or Hearing Examiner, or such other final action as is appropriate to the particular pre-condition(s).
2. One and only one six month period will be allowed for resubmittal of any required document(s) which is (are) returned to the applicant for correction.
3. This conditional approval will automatically be null and void if all required pre-condition(s) have not been fulfilled as set forth above; PROVIDED, that:
 - A. The Examiner may grant a one-time extension of the submittal deadline for not more than twelve (12) months for just cause shown if and only if a written request for such extension is received by the Examiner prior to the expiration of the original time period; and
 - B. The submittal deadline will be extended automatically an amount equal to the number of days involved in any appeal proceedings.

ACKNOWLEDGMENT OF FULFILLMENT OF PRECONDITIONS

The above imposed pre-condition(s) having been fulfilled by the applicant or the successors in interest, the Department of Planning and Development Services hereby states that the instant Decision is effective as of

Certified by:

(Name)

(Title)

Frognal Estates

05-123050 SD

Decision Affirming Adequacy of EIS, Approving Plat Alteration, and Approving Planned Residential Development Preliminary Subdivision with Pre-Conditions and Conditions

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05 123050 SD FROGNAL (fka
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HEARING: Began Feb 29, 2016

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